MISSISSIPPI CODE 1972
Annotated

Conservation and Ecology

Title 49

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME TWELVE

CONSERVATION AND ECOLOGY

§§ 49-1-1 to 49-37-11

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2012 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This 2012 Replacement Volume 12 of the Mississippi Code of 1972 Annotated represents material appearing in both the original 1973 bound volume, the 1999 Replacement Volume 12 and the 2003 Replacement Volume 12, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2012 Regular Legislative Session.

This volume contains the full text of Title 49 of the Mississippi Code of 1972 Annotated, as amended through the 2012 Regular Legislative Session.

Case annotations are included based on decisions of the state and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22902-5389.

September 2012 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
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— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
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— Source Notes
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

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CHAPTER 1

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§ 49-1-1. Definitions.

Wherever used in this chapter, or in any other statute, or rule or regulation affecting the former State Game and Fish Commission and any of its functions or duties:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "Director" means the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

(d) "Executive director" means the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

SOURCES: Codes, 1942, §§ 5843.1, 5867; Laws, 1932, ch. 123; Laws, 1938, ch. 364; Laws, 1946, ch. 423, § 5; Laws, 1948, ch. 251, § 1; Laws, 1956, ch. 147, § 4; Laws, 1962, ch. 188, § 1; Laws, 1978, ch. 484, § 27; Laws, 1989, ch. 544, § 110; Laws, 1994, ch. 592, § 4; Laws, 2000, ch. 516, § 11, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-3. Commission on Wildlife, Fisheries and Parks assuming powers and duties of Commission on Wildlife Conservation.

The Commission on Wildlife, Fisheries and Parks shall be the Mississippi Commission on Wildlife Conservation and shall retain all powers and duties granted by law to the Mississippi Commission on Wildlife Conservation, and wherever the term "Mississippi Commission on Wildlife Conservation" appears in any law the same shall mean the Commission on Wildlife, Fisheries and Parks. The Executive Director of the Department of Wildlife, Fisheries and Parks may assign to the appropriate divisions such powers and duties as it deems appropriate to carry out the lawful duties of the department, and expend funds as lawfully appropriated.

SOURCES: Codes, 1942, § 5841; Laws, 1932, ch. 123; Laws, 1936, ch. 193; Laws, 1944, ch. 234, § 1; Laws, 1948, ch. 255, § 1; Laws, 1952, ch. 186, § 1; Laws, 1956, ch. 147, § 1; Laws, 1958, ch. 172, § 1; Laws, 1960, ch. 163, § 1 ¶¶ (a)-(e); Laws, 1978, ch. 484, § 28; Laws, 1989, ch. 544, § 111, eff from and after July 1, 1989.

Cross References — Authority of Governor to make appointments, see § 7-1-5.

General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Powers and duties of the commission, see § 49-1-29.

Mississippi Commission on Wildlife, Fisheries and Parks, see § 49-4-4.

State game and fish commission appointing one director for Pearl River Valley Water Supply District, see § 51-9-107.

Use of boats and other vessels, see §§ 59-21-1 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 40.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-1-4. Department of Wildlife, Fisheries and Parks to assume powers and duties of Department of Wildlife Conservation.

The Department of Wildlife, Fisheries and Parks shall be the Department of Wildlife Conservation and shall retain all powers and duties granted by law to the Department of Wildlife Conservation, and wherever the term "Department of Wildlife Conservation" appears in any law the same shall mean the Department of Wildlife, Fisheries and Parks. The executive director may assign to the appropriate divisions such powers and duties as deemed appropriate to carry out the lawful functions of the department.

SOURCES: Laws, 1989, ch. 544, § 113, eff from and after July 1, 1989.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Department of Wildlife, Fisheries and Parks, and its executive director, see § 49-4-6.

§§ 49-1-5 and 49-1-7. Repealed.

Repealed by Laws of 1978, ch. 484, § 30, eff from and after July 1, 1979.

§ 49-1-5. [Codes, 1942, §§ 5841, 5843; Laws, 1932, ch. 123; Laws, 1936, chs. 193, 197; Laws, 1938, ch. 178; Laws, 1942, ch. 250; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 1; Laws, 1948, chs. 254, 255, § 1; Laws, 1952, ch. 186, §§ 1, 3; Laws, 1956, ch. 147, §§ 1, 3; Laws, 1958, ch. 172, §§ 1, 2; Laws, 1960, ch. 163, §§ 1, 2; Laws, 1966, ch. 445, § 14]

§ 49-1-7. [Codes, 1942, § 5843; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; Laws, 1942, ch. 250; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 1; Laws, 1948, ch. 254, § 1; Laws, 1952, ch. 186, § 3; Laws, 1956, ch. 147, § 3; Laws, 1958, ch. 172, § 2; Laws, 1960, ch. 163, § 2; Laws, 1966, ch. 445, § 14]

Editor's Note — Former § 49-1-5 provided for the appointment of a director of conservation.

Former § 49-1-7 provided for the appointment of a deputy director of conservation.

§ 49-1-9. Chief law enforcement officer.

The director shall appoint a chief law enforcement officer who shall be qualified and experienced in law enforcement work and who has served for not less than five (5) years as a duly sworn wildlife enforcement officer in the department and who has served in a supervisory position. The chief law enforcement officer shall be furnished a vehicle to perform his duties of overseeing all enforcement operations throughout the state in accordance with department policy. The officer shall enter into bond in the same amount as provided for the director, and conditioned upon the same terms. The primary duty of the chief law enforcement officer shall be directing the enforcement of all game and fish laws and regulations, cooperating with the cattle theft bureau of the Mississippi Department of Public Safety, and instructing all conservation officers in the discharge of their respective duties. The salary of the chief law enforcement officer shall be fixed by the commission in its discretion.

SOURCES: Codes, 1942, § 5843; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; Laws, 1942, ch. 250; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 1; Laws, 1948, ch. 254, § 1; Laws, 1952, ch. 186, § 3; Laws, 1956, ch. 147, § 3; Laws, 1958, ch. 172, § 2; Laws, 1960, ch. 163, § 2; Laws, 1966, ch. 445, § 14; Laws, 1974, ch. 569, § 7; Laws, 1983, ch. 368, § 2; Laws, 1993, ch. 574, § 3; Laws, 1996, ch. 412, § 3, eff from and after passage (approved March 21, 1996).

Editor's Note — Section 49-1-4 provides that the term "department" shall mean the "Department of Wildlife, Fisheries and Parks".

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Agricultural and Livestock Theft Bureau, see § 69-29-1.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fishers and Parks Law Book (LexisNexis).

§ 49-1-11. Public relations officer.

The director, with the advice and consent of the commission, shall appoint a qualified public relations officer whose duty it shall be to make information available to the public concerning rules, regulations, and policies of the commission, to generally make information available to the public on game and fish conservation work, and to perform such other public relations duties as may be directed by the director. His salary shall be fixed by the commission in its discretion.

SOURCES: Codes, 1942, § 5843; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; Laws, 1942, ch. 250; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 1; Laws, 1948, ch. 254, § 1; Laws, 1952, ch. 186, § 3; Laws, 1956, ch. 147, § 3; Laws, 1958, ch. 172, § 2; Laws, 1960, ch. 163, § 2; Laws, 1966, ch. 445, § 14, eff from and after July 1, 1966.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

§ 49-1-12. Wardens, game wardens, and game and fish wardens designated conservation officers; construction and effect of designation.

(1) The term "conservation officer" means a law enforcement officer of the department.

(2) Wherever the terms "warden," "game warden," or "game and fish warden" appear, the same shall mean conservation officer.

SOURCES: Laws, 1974, ch. 569, § 1; Laws, 1994, ch. 592, § 3, eff from and after passage (approved April 8, 1994).

Cross References — Conservation officer as Mississippi game warden, see § 37-107-3.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fishers and Parks Law Book (LexisNexis).

§ 49-1-13. Conservation officers.

The director is hereby authorized and directed to appoint as many conservation officers as may be required to efficiently enforce the laws for the protection of wild animals, birds and fish, and the laws relating to theft of cattle, trespass prohibitions and litter. These officers shall be located in different sections of the state where their services are most needed. Conservation officers shall police the state lands in their respective districts and prohibit the unlawful cutting of timber. The salary of the conservation officers shall be as determined by the State Personnel Board, or its successor.

Each conservation officer and supervisor shall be furnished an allowance for uniforms not to exceed the amount specified in the appropriation bill.

SOURCES: Codes, 1942, § 5851; Laws, 1932, ch. 123; Laws, 1934, ch. 283; Laws, 1938, ch. 178; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 2; Laws, 1950, ch. 214; Laws, 1952, chs. 192, § 4, 186, § 4; Laws, 1958, ch. 171; Laws, 1962, ch. 184; Laws, 1973, ch. 502, § 1; Laws, 1974, ch. 569, § 8; Laws, 1978, ch. 417, § 2; Laws, 1980, ch. 553, § 1; Laws, 1982, ch. 365, § 2; Laws, 1996, ch. 370, § 1, eff from and after passage (approved March 18, 1996).

Editor's Note — Section 49-1-1 provides the word "director" shall mean and refer to the Executive Director of the Department of Wildlife, Fisheries and Parks.

Cross References — Prohibition against warden's acquiring confiscated property, see § 25-1-51.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Conservation officer defined as law enforcement officer of the Department of Wildlife, Fisheries and Parks, see § 49-1-12.

Powers and duties of conservation officers, see §§ 49-1-43 through 49-1-44.
Fisheries and wildlife fund, see § 49-5-21.
Enforcement of game and fish laws, see § 49-5-43.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 37 et seq.

CJS. 36A C.J.S., Fish §§ 26 et seq.

Practice References. Mississippi Wildlife, Fishers and Parks Law Book (LexisNexis).

§ 49-1-14. Retiring sworn law enforcement officer employed by Commission on Wildlife, Fisheries and Parks authorized to retain side arm under certain circumstances.

(1) Each person employed by the Commission on Wildlife, Fisheries and Parks as a sworn law enforcement officer who meets the requirements of subsection (2) of this section, and who retires for superannuation or for reason of disability under the Public Employees' Retirement System, upon his request, may be allowed by the commission to retain, as his personal property, one (1) side arm which was issued to him, during his service, provided funds are available for such purpose.

(2) In order to be eligible to retain a side arm issued to him under subsection (1) of this section, a retiring sworn law enforcement officer employed by the commission must have attended and successfully completed the law enforcement curriculum at the Mississippi Law Enforcement Officers' Training Academy, and must be certified as a qualified law enforcement officer by the Board on Law Enforcement Officer Standards and Training.

SOURCES: Laws, 1992, ch. 549, § 1; Laws, 2007, ch. 420, § 1, eff from and after July 1, 2007.

Cross References — Mississippi Law Enforcement Officers' Training Academy generally, see §§ 45-5-1 et seq.

Board on Law Enforcement Officer Standards and Training, see §§ 45-6-5 through 45-6-9.

Conservation officer defined as law enforcement officer of the Department of Wildlife, Fisheries and Parks, see § 49-1-12.

ATTORNEY GENERAL OPINIONS

The Department of Marine Resources (DMR) had the authority to allow a retiring conservation officer to keep his sidearm where the officer in question had been employed with the Department of Wildlife, Fisheries and Parks for over 20 years before being transferred to the DMR. Woods, March 17, 2000, A.G. Op. #2000-0130.

§ 49-1-15. Conservation officers; appointments and qualifications.

(1) All appointments of conservation officers shall be under rules adopted and promulgated by the commission. No person shall be appointed from and after July 1, 2001, unless he meets the following requirements:

(a) Is at least twenty-one (21) years of age; and

(b) Has successfully completed sixty-four (64) semester hours at an accredited community college or university or has an associate degree from an accredited community college or has passed the Law Enforcement Academy and has at least five (5) years experience in law enforcement.

(2) Each applicant, prior to entering into performance of his duties, at the expense of the department, shall attend and complete an appropriate curriculum in the field of law enforcement at the Mississippi Law Enforcement Officers' Training Academy or other training academy whose curriculum complies with requirements of the Board on Law Enforcement Officer Standards and Training. Conservation officers shall, on a periodic basis, be required to successfully complete additional advanced courses in law enforcement in order that they will be properly improved and trained in the modern, technical advances of law enforcement.

SOURCES: Codes, 1942, §§ 5851, 5852; Laws, 1932, ch. 123; Laws, 1934, ch. 283; Laws, 1938, ch. 178; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 2; Laws, 1950, ch. 214; Laws, 1952, chs. 192, § 4, 186, § 4; Laws, 1958, ch. 171; Laws, 1962, ch. 184; Laws, 1974, ch. 569, § 9; Laws, 1980, ch. 553, § 2; Laws, 1984, ch. 518, § 4; Laws, 1984, 1st Ex Sess, ch. 28, § 2; Laws, 1985, ch. 504, § 6; Laws, 1989, ch. 423, § 1; Laws, 1998, ch. 346, § 1; Laws, 2001, ch. 506, § 1; Laws, 2002, ch. 362, § 1, eff from and after passage (approved Mar. 18, 2002.)

Editor's Note — Section 7, ch. 504, Laws of 1985, effective from and after July 1, 1985, provides as follows:

"SECTION 7. Section 5, Chapter 518, Laws of 1984, as amended by Section 3, Chapter 28, First Extraordinary Session of 1984, is amended as follows:

"SECTION 5. (1) Nothing in Section 27-5-75 or 49-1-15 shall be construed to require employees who were hired prior to July 1, 1985, to retire prior to attaining the age of sixty-five (65) years unless, after attaining the age of sixty-two (62) years on or before June 30, 1986, and those who attain the age of sixty (60) years thereafter, they have completed four (4) years of creditable service for purposes of the Public Employees' Retirement System, at which time they shall be retired forthwith.

"(2) Nothing in Section 27-5-75 or 49-1-15 shall be construed to prevent the State Tax Commission or the Mississippi Department of Wildlife Conservation from operating under an interim retirement policy until June 30, 1985, provided that said policy conforms with the provisions of The Age Discrimination In Employment Act of 1967, 29 U.S.C., Sections 621 et seq., including Section 623(f) thereof.

"(3) No inspection station employee or field inspector employed by the State Tax Commission, or conservation officer employed in the Bureau of Fisheries and Wildlife, shall be dismissed prior to July 1, 1985, solely because of his age, if said employee has not reached the age of seventy (70) years."

Cross References — Mississippi Law Enforcement Officers' Training Academy, see §§ 45-5-1 et seq.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Applicability of the qualifications of this section to enforcement officers appointed by the boat and water safety commission, see § 59-21-123.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 49-1-17.
7. Under former § 49-1-23.

1. In general.

Physical fitness may be a job qualification despite the lack of formal fitness standards; the weight to be given the existence or absence of formal standards is for the fact-finder to decide, with its finding subject to appropriate appellate review on the entire record. EEOC v. Mississippi State Tax Comm'n, 873 F.2d 97 (5th Cir. 1989).

Because Mississippi failed to establish health and fitness qualifications reasonably necessary for job of conservation officer and for which age could be used as valid proxy, clause in Age Discrimination in Employment Act of 1967 making it not unlawful for employer to take action otherwise prohibited where age was bona fide occupational qualification reasonably necessary to normal operation of particular business was not available; therefore, statute (§ 49-1-15) plainly violated Age Discrimination in Employment Act of 1967 and was unenforceable. EEOC v. Mississippi, 837 F.2d 1398 (5th Cir. 1988).

Section 49-1-15, as amended and which became effective July 1, 1985, violates § 4(a) of Age Discrimination in Employment Act, 29 USCS § 623(a), in that it requires mandatory retirement of conservation officers of Department of Wildlife Conservation at age 60 and maximum hiring at age 35 and is unenforceable. EEOC v. Mississippi, 654 F. Supp. 1168 (S.D. Miss. 1987), aff'd, 837 F.2d 1398 (5th Cir. 1988).

2.-5. [Reserved for future use.]

6. Under former § 49-1-17.

Where the charges made by the game and fish commission to support the discharge of a game warden were not sufficient to comply with the statute, the action of the trial court in a mandamus action in entering judgment reinstating him to his position was not contrary to the overwhelming weight of the law and evidence. Vinzant v. Poole, 185 So. 2d 919 (Miss. 1966).

7. Under former § 49-1-23.

Statute did not require that governor be present at hearing but rather required that written notice be given to the governor and the employee; even if the statute had required the governor's attendance, the presence of his representative would have sufficed. Mississippi Game & Fish Comm'n v. Ainsworth, 326 So. 2d 811 (Miss. 1976).

The chancery court could order the Mississippi Game and Fish Commission to pay the salary of an unreasonably discharged game warden supervisor without first making a judicial determination that the surety bonds of the members or officers of the commission were not available for satisfaction of such a judgment. Game & Fish Comm'n v. Marlar, 206 So. 2d 628 (Miss. 1968).

Where there is nothing in the record to show cause to discharge a game warden supervisor, and an order discharging him for reasons shown by the record was unreasonable, whimsical, and capricious, and constituted a breach of his rights under this section [Code 1942, § 5841], his dismissal was not justified. Game & Fish Comm'n v. Marlar, 206 So. 2d 628 (Miss. 1968).

Subdivisions (c) and (d) of this section [Code 1942, § 5841] apply to all employees, including game wardens, after 12 months of service. Vinzant v. Poole, 185 So. 2d 919 (Miss. 1966).

Where the charges made by the game and fish commission to support the discharge of a game warden were not sufficient to comply with the statute, the action of the trial court in a mandamus action in entering judgment reinstating him to his position was not contrary to the overwhelming weight of the law and evidence. Vinzant v. Poole, 185 So. 2d 919 (Miss. 1966).

Where the game and fish commission was in no way adversely affected by the plaintiff's delay of seven months in filing a mandamus action for reinstatement to the position from which he had been unlawfully discharged, and there was no evidence of laches on plaintiff's part, the judgment of the lower court reinstating the plaintiff was affirmed. Cannada v. Marlar, 185 So. 2d 649 (Miss. 1966).

§ 49-1-16. Conservation Officers' Reserve Unit.

(a) There is hereby created a Conservation Officers' Reserve Unit, hereinafter termed "the reserve," to assist the conservation officers in the performance of their duties. The reserve shall consist of volunteers who are approved by the chief law enforcement officer of the department or his designated representative, and the members of the reserve shall serve without pay. Reserve officers shall be in such numbers as determined by the enforcement needs, with the maximum strength of reserve officers limited to the same number as conservation officers.

(b) In order to be eligible for membership in the reserve, an applicant must be twenty-one (21) years of age, be a high school graduate or its equivalent, be in good physical condition, have a Mississippi driver's license, be in good standing with the community, be available for training and duty, not be a member of any police, auxiliary police, civil defense, or private security agency, have never been convicted of a felony, and have one (1) of the following:

(i) An honorable discharge or honorable separation certificate from one (1) of the United States military services;

(ii) Three (3) years of responsible post-high school work experience that required the ability to deal effectively with individuals and groups of persons;

(iii) Successful completion of sixty (60) semester hours at an accredited college or university; or

(iv) Such qualifications as are outlined in this section for enforcement officers.

Members of the immediate family of conservation officers shall not be eligible for the reserve unless a special waiver is granted by the commission.

Upon acceptance into the reserve, members shall receive a temporary appointment for one (1) year. During this year of temporary status, members must successfully complete the required training and must qualify on the same firearms course as conservation officers.

(c) The reserve shall be under the leadership and direction of the chief law enforcement officer, who may designate a conservation officer to coordinate the actions of the reserve. The training of the reserve shall be conducted by a conservation officer. The reserve shall meet at least once each month for the purpose of training and transacting such business as may come before it. The chief law enforcement officer shall be notified in writing of all meetings of the reserve and the time and place of such meetings shall be recorded with the chief law enforcement officer. The chief law enforcement officer shall prepare a reserve officer's manual with the advice and consent of the commission. The manual shall include, but is not limited to, the following: activities and operations, training, administration and duties. During active service, the reserve shall be under the direction of the chief law enforcement officer or his designated representative. When a reserve officer is on active duty and assigned to a specific conservation officer, he shall be under the direct supervision of that officer. Reserve officers serve at the discretion of the chief law enforcement officer and may be dismissed by him or by a board of inquiry appointed by the commission. Reserve officers shall furnish their own uniforms and other personal equipment if the commission does not provide such items.

(d) The commission may, by regulation, require members of the Conservation Officers' Reserve Unit to attend officer reserve training programs conducted by county or municipal agencies or at the Mississippi Law Enforcement Officers Training Academy at the expense of the commission if the commission deems such training necessary or desirable.

(e) The commission may issue uniforms to such reserve officers and may authorize the issuance of any state equipment necessary for the reserve officers to adequately assist law enforcement officers. The commission is authorized to develop a reserve officer identification system to accomplish the issuance of such items in accordance with the State Auditor guidelines.

(f) In the event the commission shall determine that a member of the Conservation Officers' Reserve Unit may attend a training program as authorized under the provisions of this section, the commission shall require that any such reserve officer shall sign an agreement, prior to attending a training program, which shall stipulate that if the reserve officer accepts employment from any other public or private law enforcement agency within three (3) years after completion of his training program, the reserve officer or the respective hiring law enforcement agency shall reimburse the Department of Wildlife, Fisheries and Parks for the total cost of his training program. By October 1 of each year, the department shall provide the Game and Fish Committee of the Mississippi House of Representatives and the Wildlife and Marine Resources Committee of the Mississippi Senate a listing which contains each name and the respective cost of training each reserve officer received during the previous year.

SOURCES: Laws, 1990, ch. 577, § 2, eff from and after July 1, 1990.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Enforcement Officers' Reserve Unit, see § 49-15-21.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-17. Repealed.

Repealed by Laws of 1980, ch. 553, § 5, eff from and after July 1, 1980.

[Codes, 1942, §§ 5853, 5871; Laws, 1932, ch. 123; 1942, ch. 250; Laws, 1944, ch. 237, § 1; Laws, 1946, ch. 423, § 4; Laws, 1954, ch. 172; Laws, 1956, ch. 150; Laws, 1958, ch. 174; Laws, 1962, ch. 189, § 2; Laws, 1966, ch. 263, § 1; Laws, 1971, ch. 372, § 1; Am Laws, 1974, ch. 569 § 10]

Editor's Note — Former § 49-1-17 provided for rating all wardens on the basis of merit and efficiency.

§ 49-1-19. Political activity.

(1) No member of the commission, the executive director, administrative officer, employee, supervisor or conservation officer shall be active in any manner for or on behalf of his own candidacy or the candidacy of any candidate for any public office during his term of office or employment with said department. Violation of this subsection shall constitute a Class II violation and upon conviction thereof the violator shall be punished as provided in Section 49-7-143 for each offense. A conviction shall render vacant the office or position of the violator.

(2) While retaining the right to vote as he may please and to express privately his opinions on all political subjects, no executive director or conservation officer shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof, nor for the purpose of coercing the political action of any person or body.

SOURCES: Codes, 1942, §§ 5841, 5854; Laws, 1932, ch. 123; Laws, 1936, ch. 193; Laws, 1944, ch. 234, § 1; Laws, 1948, ch. 255, § 1; Laws, 1952, ch. 186, § 1; Laws, 1956, ch. 147, § 1; Laws, 1958, ch. 172, § 1; Laws, 1960, ch. 163, § 1 ¶¶ (a)-(e); Laws, 1974, ch. 569, § 11; Laws, 1985, ch. 504, § 8; Laws, 2000, ch. 516, § 12, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Prohibition against political activities of civil servants of municipalities, see §§ 21-31-27, 21-31-75.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Although the statute prohibits convicted violators from continuing to serve in their office or position with the Mississippi Department of Wildlife, Fisheries, and Parks and a violation subjects them to a charge for a misdemeanor, it does not disqualify them from seeking or holding a political office. Callahan v. Leake County Democratic Executive Comm., 773 So. 2d 938 (Miss. 2000).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 49-1-19 prohibits conservation officer from being candidate for any public office. Hatcher, Jan. 6, 1993, A.G. Op. #92-0963.

Qualifying for office constitutes activity in violation of this section. Clay, Dec. 6, 2002, A.G. Op. #02-0688.

§ 49-1-21. Fidelity bonds; oath of office.

(1) Each member of the commission or any officer or employee of the commission handling funds of the commission shall execute and file with the proper officer a bond in the sum of Thirty Thousand Dollars ($30,000.00), with a surety company authorized to do business in the state, which bond shall be approved by the Commissioner of Insurance and conditioned upon the faithful performance of his official duties. Premiums on the bonds shall be paid by the Department of Wildlife, Fisheries and Parks.

(2) The executive director shall execute and file with the State Treasurer a bond in the sum of Thirty Thousand Dollars ($30,000.00) and each conservation officer shall execute and file a bond in the sum of Two Thousand Dollars ($2,000.00), conditioned upon the faithful performance of their respective duties and that they, respectively, will account for and pay over pursuant to law all state monies received by them under the laws for the protection of wild animals, birds and fish. They shall be reimbursed for the premiums on their bonds from the Fisheries and Wildlife Fund in case a surety company acts as surety on such bond.

Before entering upon the duties of his office, the Executive Director and each conservation officer of the Department of Wildlife, Fisheries and Parks shall take and subscribe to the constitutional oath of office. Such oath or affirmation shall be filed in the office of the Secretary of State.

SOURCES: Codes, 1942, §§ 5841, 5855; Laws, 1932, ch. 123; Laws, 1936, ch. 193, 1938, ch. 178; Laws, 1944, ch. 234, § 1; Laws, 1948, ch. 255, § 1; Laws, 1952, ch. 186, § 1; Laws, 1956, ch. 147, § 1; Laws, 1958, ch. 172, § 1; Laws, 1960, ch. 163, § 1 ¶¶ (a)-(e); Laws, 1974, ch. 569, § 12; Laws, 1982, ch. 365, § 3; Laws, 1983, ch. 368, § 1; Laws, 1991, ch. 366, § 1, eff from and after passage (approved March 15, 1991).

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Fisheries and wildlife fund, see § 49-5-21.

JUDICIAL DECISIONS

1. In general.

The chancery court could order the Mississippi game and fish commission to pay the salary of an unreasonably discharged game warden supervisor without first making a judicial determination that the surety bonds of the members or officers of the commission were not available for satisfaction of such a judgment. Game & Fish Comm'n v. Marlar, 206 So. 2d 628 (Miss. 1968).

§§ 49-1-23 and 49-1-24. Repealed.

Repealed by Laws of 1988, ch. 405, eff from and after July 1, 1988.

§ 49-1-23. [Codes, 1942, §§ 5841, 5853; Laws, 1932, ch. 123; Laws, 1936, ch. 193; Laws, 1944, ch. 234, § 1; Laws, 1946, ch. 423, § 4; Laws, 1948, ch. 255, § 1; Laws, 1952, ch. 186, § 1; Laws, 1956, ch. 147, § 1; Laws, 1958, ch. 172, § 1; Laws, 1960, ch. 163, § 1 ¶¶ (a)-(e); Am Laws, 1974, ch. 569, § 13]

§ 49-1-24. [En Laws, 1980, ch. 553, § 6]

Editor's Note — Former § 49-1-23 provided procedures for dismissal of employees and wardens.

Former § 49-1-24 related to a hearing and reasons for removal of a conservation officer.

§§ 49-1-25 and 49-1-27. Repealed.

Repealed by Laws of 1978, ch. 484, § 30, eff from and after July 1, 1979.

§ 49-1-25. [Codes, 1942, § 5843; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; 1942, ch. 250; Laws, 1944, ch. 234; Laws, 1946, ch. 423, § 1; Laws, 1948, ch. 254, § 1; Laws, 1952, ch. 186, § 3; Laws, 1956, ch. 147, § 3; Laws, 1958, ch. 172, § 2; Laws, 1960, ch. 163, § 2; Laws, 1966, ch. 445, § 14]

§ 49-1-27. [Codes, 1942, § 5842; Laws, 1932, ch. 123; 1952, ch. 186, § 2; 1956, ch. 147, § 2; 1960, ch. 163 § 1(f)]

Editor's Note — Former § 49-1-25 provided for payment of traveling expenses of the commission.

Former § 49-1-27 made provisions for meetings of the fish and game commission.

§ 49-1-29. Powers and duties of commission and executive director.

The commission may promulgate rules and regulations, inaugurate studies and surveys, and establish any services it deems necessary to carry out wildlife laws. A violation of any rules or regulations promulgated by the commission shall constitute a misdemeanor and shall be punished as provided in Section 49-7-101.

The executive director shall have authority with commission approval:

(a) To close or shorten the open season as prescribed by law in cases of urgent emergency on any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians, in any locality, when it finds after investigation and public review that the action is reasonably necessary to secure the perpetuation of any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians and to maintain an adequate supply in the affected area. The statutes shall continue in full force and effect, except as restricted and limited by the rules and regulations promulgated by the commission.

(b) To designate wildlife refuges, with the consent of the property owner or owners, in any localities it finds necessary to secure perpetuation of any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians and to maintain an adequate supply for the purpose of providing a safe retreat where the animals may rest and replenish adjacent hunting, trapping or fishing grounds or waters, and to approve land suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22.

(c) To acquire and hold for the state by purchase, condemnation, lease, or agreement as authorized from time to time by the Legislature, and to receive by gifts or devise, lands or water suitable for fish habitats, game and bird habitats, state parks, access sites, wildlife refuges, or for public shooting, trapping or fishing grounds or waters, to provide areas on which any citizen may hunt, trap or fish under any special regulations as the commission may prescribe, and to approve lands suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22.

(d) To extend and consolidate lands or waters suitable for the above purposes by exchange of lands or waters under its jurisdiction.

(e) To capture, propagate, transport, sell or exchange any species of game birds, game or fur-bearing animals, reptiles, fish or amphibians needed for stocking or restocking any lands or waters of the state.

(f) To enter into cooperative agreements with persons, firms, corporations or governmental agencies for purposes consistent with this chapter.

(g) To regulate the burning of rubbish, slashings and marshes or other areas it may find reasonably necessary to reduce the danger of destructive fires.

(h) To conduct research in improved wildlife and fisheries conservation methods and to disseminate information to the residents of the state through the schools, public media and other publications.

(i) To have exclusive charge and control of the propagation and distribution of wild birds, animals, reptiles, fish and amphibians, the conduct and control of hatcheries, biological stations and game and fur farms owned or acquired by the state; to expend for the protection, propagation or preservation of game birds, game or fur-bearing animals, reptiles, fish and amphibians all funds of the state acquired for this purpose arising from licenses, gifts or otherwise; and shall have charge of the enforcement of all wildlife laws.

(j) To grant permits and provide regulations for field trials and dog trainers.

(k) To prohibit and to regulate the taking of nongame gross fish, except minnows.

(*l*) To enter into agreements with landowners to trap and purchase quail on the premises of the landowner and to provide for the distribution of quail.

(m) To operate or lease to third persons concessions or other rights or privileges on lakes owned or leased by the department. Owners of land adjoining land owned or leased by the department shall have priority to the concessions or rights or privileges, if the owners meet the qualifications established by the commission.

(n) To implement a beaver control program and to charge fees, upon the recommendation of the Beaver Control Advisory Board, to landowners participating in the beaver control program described in Section 49-7-201.

(o) To apply for, receive and expend any federal, state or local funds, contributions or funds from any other source for the purpose of beaver control or eradication.

(p) To require the department to divide the districts into zones if necessary, and periodically survey the districts or zones to obtain information that is necessary to properly determine the population and allowable harvest limits of wildlife within the district or zone.

(q) To require Chronic Wasting Disease (CWD) testing of white-tailed deer harvested within any enclosure; to grant wildlife personnel authority to access the property and depopulate white-tailed deer within an enclosure where CWD has been diagnosed; and to grant wildlife personnel authority to access the property and utilize lethal collection methods to obtain tissue samples for testing where CWD has been diagnosed within five (5) miles of the enclosure.

SOURCES: Codes, 1942, § 5844; Laws, 1932, ch. 123; Laws, 1946, ch. 423, § 3; Laws, 1947, 1st Ex Sess ch. 41; Laws, 1948, ch. 255, § 2; Laws, 1950, ch. 215; Laws, 1954, ch. 175, §§ 1, 2; Laws, 1956, ch. 148; Laws, 1958, ch. 176; Laws, 1962, ch. 181, § 1; Laws, 1966, ch. 261, § 1; Laws, 1970, ch. 279, § 1; Laws, 1973, ch. 378, § 1; Laws, 1988, ch. 435, § 1; Laws, 1989, ch. 377, § 7; Laws, 1989, ch. 402, § 3; Laws, 1989, ch. 544, § 112; Laws, 1996, ch. 486, § 1; Laws, 2003, ch. 516, § 5; Laws, 2010, ch. 503, § 2, eff from and after Jan. 1, 2010.

Editor's Note — Section 49-1-1 provides that the term "commission" shall refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Laws of 2010, ch. 503, § 6, effective January 1, 2010, provides:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2010 amendment, in (b) and (c), added "and to approve land suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22" or similar language.

Cross References — Procedure for acquiring land by condemnation, see §§ 11-27-1 et seq.

Payment of bounty for certain animals, see § 19-5-51.

Establishment of fish and game management areas on lands leased to Commission on Wildlife, Fisheries and Parks by superintendent of prisons, see § 47-5-56.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Publication of an official magazine concerning activities of the department, see § 49-1-35.

Use of funds collected by commission, see § 49-1-51.

Creation of bird and animal preserves, see §§ 49-5-1 et seq.

Regulation of game and fish management projects or refuges, see §§ 49-5-11 et seq.

Wildlife restoration projects in cooperation with federal government, see § 49-5-25.

Fish culture activities by United States Commissioner of Fisheries, see § 49-5-33.

Eradication of rabies among foxes, see § 49-5-37.

Requirements for fishing license, see § 49-7-9.

Regulation of wholesale minnow dealers, see § 49-7-29.

Season on fox, see § 49-7-33.

Regulation of hunting with bow and arrow, see § 49-7-37.

Supervision of state lands leased for hunting, fishing, and conservation purposes, see § 49-7-137.

Powers and duties of commission with respect to migratory waterfowl stamps, see §§ 49-7-161 et seq.

Beaver control program, see §§ 49-7-201, 49-7-203.

Regulation of shooting preserves, see §§ 49-11-1 et seq.

Regulation of commercial quail, see §§ 49-13-1 et seq.

Authority of governor to accept gifts of land, see § 55-3-1.

Services provided by Mississippi State Chemical Laboratory, see §§ 57-21-1 et seq.

Use of boats and other vessels, see §§ 59-21-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The stop and search of defendant's pickup truck at a roadblock set up by game wardens to conduct routine game checks in a wildlife management area did not constitute a condemned intrusion on defendant's Fourth Amendment right against unreasonable search and seizure. Drane v. State, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

Notwithstanding a technical flaw in Commission on Wildlife Conservation's regulation under the authority of which the initial stop was made, the stop of defendant's pickup truck at a roadblock set up by game wardens to conduct routine game checks in a wildlife management area, and the search of the vehicle when, while preparing to inspect defendant's hunting license or identification, one of the wardens detected the odor of marijuana, were authorized by Mississippi law, since the initial stop was authorized by the necessary and proper language of Mississippi Code § 49-1-29, and the search was permissible under Mississippi Code § 49-1-43, because probable cause existed after the warden detected the odor of marijuana. Drane v. State, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

Suit for damages against Mississippi Game and Fish Commission under 42 USCS §§ 1981 and 1983 was barred by the Eleventh Amendment. Clifton v. Grisham, 381 F. Supp. 324 (N.D. Miss. 1974).

Game wardens who had observed the defendant catch catfish smaller than the legal minimum by means of illegal traps in a public lake and subsequently transport them by boat to a point where he loaded them on a pickup truck were lawfully entitled to arrest the defendant and search his truck, and their evidence was admissible in court. Russell v. State, 220 So. 2d 334 (Miss. 1969).

The fact that a defendant who admitted that he was catching fish "trying to make a living" had not paid the commercial fisherman's privilege license required by Code 1942, § 5609 was no defense to a charge of possession of undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

An admission of guilt made by a defendant spontaneously and before arresting game wardens had an opportunity to advise him of his constitutional rights was admissible against him when tried on the charge of possessing undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

No recovery allowed a riparian owner as against the members of the state game and fish commission for the value of fish taken from an inland lake under a contract between the commission and another for the removal of predatory fish and nongame gross fish, a percentage of the latter being given the contractor as consideration for the removal. State Game & Fish Comm'n v. Louis Fritz Co., 187 Miss. 539, 193 So. 9 (1940).

Where on review in the Supreme Court, the members thereof were equally divided as to whether the state game and fish commission and a contractor hired by such commission should be enjoined from removing predatory and non-game gross fish from an inland lake at the suit of a riparian owner, such injunction would be continued. State Game & Fish Comm'n v. Louis Fritz Co., 187 Miss. 539, 193 So. 9 (1940).

ATTORNEY GENERAL OPINIONS

The control of beavers and other nuisance animals is vested with the Mississippi Department of Wildlife, Fisheries and Parks, and it is incumbent upon the conservation officers thereof to carry out the control of such animals as a part of their official duties. Polles, November 25, 1998, A.G. Op. #98-0731.

RESEARCH REFERENCES

ALR. Applicability of state fishing license laws or other public regulations to fishing in private lake or pond. 15 A.L.R.2d 754.

Liability for injury to property inflicted by wild animal. 57 A.L.R.2d 242.

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-31. Repealed.

Repealed by Laws of 2000, ch. 376, § 1, eff from and after passage April 17, 2000.

[Codes, 1942, § 5844-11; Laws, 1946, ch. 209, § 1; Laws, 1974, ch. 569, § 14, eff from and after passage (approved April 24, 1974).]

Editor's Note — Former § 49-1-31 prohibited the Commission on Wildlife, Fisheries and Parks from regulating fishing on the banks of the spillway of the Sardis Reservoir.

§ 49-1-33. Acquisition of lands overflowed by construction of dam.

Whenever the commission shall desire to construct or cause to be constructed any dam or similar structure in or across any lake, stream, river or other waters under its control in order to prevent or control the deterioration or drying up of such waters, and the construction of such dam or other structure could cause the level of such waters to be raised and thereby cause the land or property adjoining or adjacent to such lake, stream, river, or other waters to be overflowed, inundated or flooded, the commission shall have the power and authority to acquire, hold and own any such land or property so overflowed, inundated or flooded from the owner thereof by purchase, grant, donation, or otherwise. The commission is hereby authorized and empowered to exercise the right of eminent domain to condemn any such land or property in the manner and method now or hereafter provided by law for the exercise of such right of eminent domain by railway, telegraph and telephone companies, and/or the Mississippi Transportation Commission.

SOURCES: Codes, 1942, § 5844-01; Laws, 1944, ch. 235, § 1; Laws, 2000, ch. 516, § 13, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Procedure for exercising right of eminent domain, see §§ 11-27-1 et seq.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 54.

CJS. 29A C.J.S., Eminent Domain § 60(3).

§ 49-1-35. Official magazine of department.

The commission may publish an official magazine concerning the activities of the department and other matters of interest to Mississippi hunters, fishermen, boaters and other outdoorsmen. The commission may charge and collect a fee for subscriptions and make such other rules and regulations as may be necessary for the publishing of such magazine. The subscription rates shall be as follows: for a one-year subscription, not less than Five Dollars ($5.00) nor more than Nine Dollars ($9.00); for a two-year subscription, not less than Nine Dollars and Fifty Cents ($9.50) nor more than Seventeen Dollars and Fifty Cents ($17.50); and for a three-year subscription, not less than Fourteen Dollars and Fifty Cents ($14.50) nor more than Twenty-six Dollars and Fifty Cents ($26.50). The department may establish a fund to be known as the MS Outdoors Fund. The proceeds from subscriptions shall be deposited in such fund. Monies in such fund shall be deposited in an interest-bearing account in an approved state depository. Proceeds from this account, along with the interest earned on the same, for each fiscal year's magazine shall be transferred to the Bureau of Administration's operating account to defray the publishing expenses of MS Outdoors and related expenses.

SOURCES: Codes, 1942, § 5844-05; Laws, 1962, ch. 183; Laws, 1983, ch. 338; Laws, 2000, ch. 516, § 14, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "commission" shall refer to the Mississippi Commission on Wildlife, Fisheries and Parks and the term "department" shall mean the "Department of Wildlife, Fisheries and Parks."

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

§ 49-1-37. Power to dispose of contraband animals, birds, fish, etc.

The edible portions of all game or fur-bearing animals, game birds, and fish seized under the provisions of this chapter or any other law for the protection of wild animals, birds, or fish, shall be disposed of by the department or under its direction to needy recipients, charitable institutions within the state and to local law enforcement agencies having facilities to prepare food for prisoners. Skins or pelts of fur-bearing animals, taken illegally, may be seized and sold by order of the department, and the funds received for same shall be paid into the Fisheries and Wildlife Fund. Nongame birds, fish and animals or parts thereof, and the plumes or skins of game birds of foreign species shall be disposed of by the department, or under its direction, by gift to scientific institutions, or, in the discretion of the department, they shall be kept by it for scientific or educational purposes, or may be destroyed. The officer disposing of any such animals, birds, fish or parts thereof, shall take a receipt from the donee for any such gift, which receipt shall be filed in the office of the department, and the department shall keep a permanent record of such gifts.

SOURCES: Codes, 1942, § 5848; Laws, 1932, ch. 123; Laws, 1936, ch. 221; Laws, 1982, ch. 365, § 4; Laws, 2002, ch. 363, § 1, eff from and after July 1, 2002.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Fisheries and wildlife fund, see § 49-5-21.

RESEARCH REFERENCES

ALR. Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-39. Power to capture or destroy animals injurious to property.

The commission may issue permits to kill any species of animals or native, nonmigratory birds which may become injurious to agricultural or other interests in any particular community. All migratory birds, including hawks, owls, and eagles and their nests and eggs are protected by the Migratory Bird

Treaty Act and federal regulations promulgated under the act. All species of blackbirds, cowbirds, starlings, crows, grackles, and English sparrows may be killed without a permit when such birds are committing or about to commit depredations on shade or ornamental trees or agricultural crops.

SOURCES: Codes, 1942, § 5849; Laws, 1932, ch. 123; Laws, 1970, ch. 280, § 1; Laws, 2000, ch. 368, § 1, eff from and after passage (approved Apr. 17, 2000.)

Cross References — Payment of bounty for certain animals, see § 19-5-51.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Federal Aspects — Migratory Bird Treaty Act, see 16 USCS §§ 703 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 39.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-41. Power to issue permits for scientific or propagation purposes.

The commission may issue a permit, revocable at pleasure, to any person authorizing the holder to collect and possess wild animals or wild birds, or birds' nests or eggs for scientific purposes, but no permit shall authorize the collection, possession, purchase or sale of migratory birds, or their nests or eggs, included in the terms of the Migratory Bird Treaty Act of July 3, 1918, and the federal regulations thereunder, for scientific exhibition, or propagating purposes, contrary to the provisions of said act and/or regulations. Before such a permit is issued for scientific purposes the applicant must pay the sum of One Dollar ($1.00) for the permit; but duly accredited representatives of public educational or scientific institutions, or government departments of the United States engaged in the scientific study of birds and animals may be granted any permit required under this chapter without enforcement or charge, and no scientific permittee shall be required to obtain a hunting license.

Permits to take, possess, purchase or sell rare or endangered species shall not be issued except, at the discretion of the commission, to a duly accredited representative of a school, college or university, museum or other scientific institution, or a representative of a federal or state agency for scientific or propagation purposes devoted to perpetuating the species.

Permits to take game or fur-bearing animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college or university, museum or other scientific institution, or a representative of a state game commission to restock the covers of the state which he represents.

A person holding a valid permit issued pursuant to the provisions of this section may buy, sell, possess and transport, for scientific purposes, the animals and birds legally taken, and sell them alive for propagation or stocking purposes, to a person holding such a permit.

When transported by a common carrier, or contained in a package, such a specimen, or any package in which same is transported, shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, an accurate statement of the number and kinds of animals or birds or specimens, or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes.

Each person receiving a permit under this section must file with the commission within fifteen (15) days after the expiration of his permit, a report of his operations under the permit, which report shall set forth the name and address of the permittee, number of his permit, number of specimens of each species taken thereunder, or otherwise acquired, disposition of same, names and addresses of persons acquiring same from the permittee, and number of each species in captivity and the number on hand for propagation purposes at the expiration of the permit.

The commission may prescribe rules and regulations governing the possession, purchase, sale and transportation of animals and birds for propagation purposes or raised in captivity under this section.

SOURCES: Codes, 1942, § 5850; Laws, 1932, ch. 123; Laws, 1970, ch. 281, § 1; Laws, 2000, ch. 516, § 15, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Enforcement of game and fish laws, see § 49-1-43.

Regulation of bird and animal preserves, see §§ 49-5-1 et seq.

Protection of nongame birds, nests, and eggs, see § 49-5-7.

Posting of refuges, see § 49-5-19.

Adoption of Federal Migratory Bird Treaty Act, see § 49-5-31.

Fish culture activities of United States Commissioner of Fisheries, see § 49-5-33.

Federal Aspects — Migratory Bird Treaty Act, see 16 USCS §§ 703 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 29.

CJS. 36A C.J.S., Fish §§ 24-26.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-43. Powers and duties of director of Department of Wildlife, Fisheries and Parks.

(1) The director shall have general supervision and control of all conservation officers, and shall enforce all the laws and regulations of the state relating to wild animals, birds and fish, and shall exercise all necessary powers incident thereto not specifically conferred on the department.

(2) The director, with the approval of the commission, shall make to the Governor and the Legislature a report covering the operation of the department for the preceding fiscal year.

(3) It shall be the duty of all conservation officers to enforce, and to obey and carry out all instructions and directions of the department with respect to the enforcement of the laws and regulations relating to wild animals, birds and fish.

(4) The director and each conservation officer shall have power, and it shall be the duty of the director and of each conservation officer:

(a) To execute all warrants and search warrants for a violation of the laws and regulations relating to wild animals, birds and fish and to serve subpoenas issued for the examination and investigation or trial of offenses against any of the laws or regulations;

(b) To search where the conservation officer has cause to believe and does believe that animals, birds or fish, or any parts thereof, or the nest or eggs of birds, or spawn or eggs of fish are possessed in violation of law or regulation and in such case to examine, without warrant, the contents of any boat, car, automobile or other vehicle, box, locker, basket, creel, crate, game bag or other package, to ascertain whether any law or regulation for the protection of animals, birds or fish have been or are being violated, and to use such force as may be necessary for the purpose of such examination and inspection;

(c) With a search warrant to search and examine the contents of any dwelling house, room, building or premises of any person suspected of violating any law or regulation, to seize all animals, birds or fish, or parts thereof, or nests or eggs of birds taken in violation of law or regulation, or showing evidence of illegal taking and to seize and confiscate all devices illegally used in taking animals, birds or fish;

(d) To arrest, without warrant, any person committing or attempting to commit a misdemeanor, felony or a breach of the peace within his presence or view and to pursue and so arrest any person committing an offense in any place in the state where the person may go or be; to aid and assist any peace officer of this state or any other state if requested, in manhunts or natural disasters within the state; and

(e) To exercise other powers of peace officers in the enforcement of game laws or regulations or of a judgment for the violation thereof, as are not herein specifically provided.

(5) In all cases of arrest without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense or is arrested on pursuit.

(6) No conservation officer shall compromise or settle out of court any violation of this chapter, or any law or regulation for the protection of wild animals, birds or fish.

(7) Nothing in this section shall be construed as granting conservation officers general police powers.

(8) Citations issued by a conservation officer for any violation of the laws for the protection of wild animals, birds and fish, the trespass laws, the litter

laws, and the boating laws shall be issued on a uniform citation form consisting of an original and at least two (2) copies. Such citation shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time the person charged with a violation is to appear to answer the charge. The uniform citation form shall make a provision on it for information that will constitute a complaint charging the offense for which the citation was issued and, when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed under that complaint.

SOURCES: Codes, 1942, §§ 5843.2, 5856; Laws, 1932, ch. 123; Laws, 1956, ch. 147, § 5; Laws, 1970, ch. 278, § 1; Laws, 1974, ch. 569, § 15; Laws, 1994, ch. 592, § 1; Laws, 1996, ch. 407, § 1, eff July 1, 1996.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4). The word "officers" was changed to "officer". The Joint Committee ratified the correction at its December 3, 1996, meeting.

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks, that the term "department" shall mean the Mississippi Department of Wildlife, Fisheries and Parks, and that the word "director" shall mean and refer to the Executive Director of the Department of Wildlife, Fisheries and Parks.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Conservation officer defined as law enforcement officer of the Department of Wildlife, Fisheries and Parks, see § 49-1-12.

Posting of refuges, see § 49-5-19.

Director's membership on water pollution control commission, see § 49-17-7.

JUDICIAL DECISIONS

1. In general.
2. Search and seizure.

1. In general.

Notwithstanding a technical flaw in Commission on Wildlife Conservation's regulation under the authority of which the initial stop was made, the stop of defendant's pickup truck at a roadblock set up by game wardens to conduct routine game checks in a wildlife management area, and the search of the vehicle when, while preparing to inspect defendant's hunting license or identification, one of the wardens detected the odor of marijuana, were authorized by Mississippi law, since the initial stop was authorized by the necessary and proper language of Mississippi Code § 49-1-29, and the search was permissible under Mississippi Code § 49-1-43, because probable cause existed after the warden detected the odor of marijuana. Drane v. State, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

Since the probable cause requirement of § 49-1-43 applies to searches only, the fact that a regulation promulgated by the Commission on Wildlife Conservation, under the authority of which defendant's vehicle was stopped, which permitted the search of vehicles by an officer who had no cause to believe that a violation had been committed, conflicted with the statute did not benefit defendant's argument that the stop of his vehicle was invalid, because the stop of a vehicle is a seizure. Drane v. State, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

Although the law permits the search of certain vehicles for contraband, an officer does not have the right to search an automobile merely because he "suspects" that the vehicle contains contraband. Smith v. State, 240 Miss. 738, 128 So. 2d 857 (1961).

2. Search and seizure.

Paragraph (b) of subsection (4) authorized the search of a boat, car, and purse where an officer testified that he observed the occupants of the car in the boat shocking fish out of a river. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

The warrantless search of a boat pursuant to § 49-1-43 was proper under the vehicle exception to the warrant requirement, notwithstanding a three hour delay between the time an officer saw illegal fishing on the boat and the actual search. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

Law enforcement agents must have probable cause to believe that property has been used in violation of the law before conducting seizures pursuant to the statute. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

An officer may only issue citations for offenses committed in his presence. If he did not witness the offense, he should present his evidence to a judge and seek an arrest warrant. Warren, May 10, 2005, A.G. Op. 05-0171.

RESEARCH REFERENCES

ALR. Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

CJS. 36A C.J.S., Fish § 29.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 7.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-43.1. Conservation officers not subject to criminal liability for trespass when performing official duties.

(1) A conservation officer may enter in or upon public or private lands or waters where game or fish are known to range in the performance of his duties to enforce the wildlife laws of the state and the conservation officer shall not be subject to criminal liability for trespass while performing such duties.

(2) The provisions of subsection (1) of this section shall not authorize a conservation officer to engage in any conduct in violation of a person's constitutional right against unreasonable searches and seizures nor expand or enlarge upon the powers and duties of a conservation officer as specifically provided for under Section 49-1-43.

SOURCES: Laws, 2006, ch. 511, § 1, eff from and after passage (approved Mar. 29, 2006.)

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-44. Powers and duties of conservation officers to apprehend certain violators.

In addition to the regulations of the commission and the statutes relating to protection and preservation of wildlife and the environment, conservation officers are hereby authorized to assist in the detection and apprehension of violators of the laws of this state which pertain to theft of cattle, to enforce and apprehend violators of the laws of this state which pertain to unauthorized dumping of garbage, obstructing streams and littering, as set forth specifically in Sections 97-15-13, 97-15-21, 97-15-23, 97-15-25, 97-15-27, 97-15-29, 97-15-31, 97-15-39, 97-15-41, 97-15-43, 97-15-45, 97-17-53, 97-17-79, 97-17-81 and 97-17-83, but not limited thereto, and in addition to any other powers and duties otherwise delegated or assigned to conservation officers.

SOURCES: Laws, 1974, ch. 569, § 2; Laws, 1994, ch. 592, § 2, eff from and after passage (approved April 8, 1994).

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Conservation officer defines as law enforcement officer of the Department of Wildlife, Fisheries and Parks, see § 49-1-12.

Enforcement of laws concerning theft of cattle, see §§ 69-29-1 et seq.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-45. Publication of rules, regulations and orders.

Rules, regulations and orders of the commission shall be published in accordance with the "Mississippi Administrative Procedures Law."

SOURCES: Codes, 1942, § 5846; Laws, 1932, ch. 123; Laws, 2006, ch. 372, § 1, eff from and after passage (approved Mar. 13, 2006.)

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Posting of refuges, see § 49-5-19.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-47. Commission may execute deeds to clear up ambiguities in conveyances to it.

The commission is hereby authorized to execute and deliver deeds or other documents to make clear any ambiguity that may exist in any deed or conveyance to it, or to make the deed or conveyance to the commission conform to the intent of the parties as to the estate or rights or easements conveyed. Such deeds or documents shall be based upon an order of the commission setting forth the facts, shall be submitted to and approved by the Attorney General and executed and delivered for the commission by the director.

SOURCES: Codes, 1942, § 5912-01; Laws, 1946, ch. 470, § 1; Laws, 2000, ch. 516, § 16, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks, and that the term "director" shall mean Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

Cross References — Power and authority of Attorney General, see § 7-5-1.

Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

§ 49-1-49. Cooperation with other departments.

The commission is hereby authorized to, and shall cooperate with the several state departments and officials in the conduct of matters in which the interest of the respective departments or officials overlap.

SOURCES: Codes, 1942, § 5845; Laws, 1932, ch. 123.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-1-51. Funds.

All funds collected by the department under this chapter shall be used by the commission for the purpose of carrying out all purposes of this chapter.

SOURCES: Codes, 1942, § 5862; Laws, 1932, ch. 123; Laws, 1936, ch. 221; Laws, 1938, ch. 178; Laws, 1948, ch. 25, § 3; Laws, 2000, ch. 516, § 17, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks, that the term "department" shall mean the Mississippi Department of Wildlife, Fisheries and Parks, and that the word "director" shall mean and refer to the Executive Director of the Department of Wildlife, Fisheries and Parks.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Collection of annual sum for discharging industrial waste into streams, see § 49-1-29.

Establishment of a fund in connection with the publication of an official magazine of the department, see § 49-1-35.

Creation of Fisheries and Wildlife fund, see § 49-5-21.

Fines and penalties assessed for violation of game and fish laws, see §§ 49-5-39, 49-7-101.

Funds collected for licenses, see § 49-9-11.

JUDICIAL DECISIONS

1. In general.

County warrant issued against game and fish fund, which did not contain funds to pay warrant for printing of licenses and copies of game and fish laws necessary for enforcement of laws in county, was undisputed outstanding obligation of the county, and hence holder of warrant could compel board of supervisors by mandamus to issue and sell bonds of county in sufficient amount to pay warrant after repeal of previous game and fish laws, since legislature in repealing former laws on the subject did not intend an unconstitutional repudiation of a debt incurred under such repealed laws. Tucker Printing Co. v. Board of Supvrs., 171 Miss. 608, 158 So. 336 (1934).

§ 49-1-53. Offices; supplies.

The department may, with any funds owned by it, purchase equipment and/or office furnishings sufficient to carry on its work; and, if the Department of Finance and Administration cannot assign suitable offices for the department in either of the state capitols, in the city of Jackson, then the Department of Finance and Administration shall rent suitable offices to properly house the department which shall then be authorized to pay such rental out of any of its funds.

SOURCES: Codes, 1942, § 5911; Laws, 1934, ch. 284; Laws, 2000, ch. 516, § 18, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "department" shall mean and refer to the Mississippi Department of Wildlife, Fisheries and Parks.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

§ 49-1-55. Natural Science Museum.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks' Mississippi Museum of Natural Science is hereby designated as Mississippi's official State Natural Science Museum.

The museum will henceforth be named "Mississippi Museum of Natural Science, The Fannye A. Cook Memorial, a Division of the Mississippi Department of Wildlife, Fisheries and Parks."

(2) The Legislature shall annually appropriate from the General Fund a sum to defray not less than one hundred percent (100%) of the expenses of the museum.

SOURCES: Codes, 1942, § 5928.5; Laws, 1971, ch. 309, §§ 1, 2; Laws, 1977, ch. 356; Laws, 2000, ch. 516, § 19, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

§ 49-1-57. Assent to federal program for promotion of hunter safety, principles of conservation and sportsmanship.

The State of Mississippi hereby assents to the provisions of the Act of Congress entitled, "An Act to Revise and Clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act," approved October 23, 1970 (Public Law 91-503, 91st Congress). The department may:

(a) Establish a hunter safety conservation and sportsmanship program;

(b) Apply for, receive and expend funds from any source for this program; and

(c) Discharge any other duties, responsibilities and powers as are necessary to implement the program.

SOURCES: Codes, 1942, § 5844-13; Laws, 1972, ch. 314, § 1; Laws, 1995, ch. 409, § 1, eff from and after passage (approved March 15, 1995).

Editor's Note — Section 49-1-1 provides that the term "State Game and Fish Commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Funding of program authorized under this section through hunter training penalty assessment fund, see § 49-1-65.

Federal Aspects — For Public Law 91-503, see 16 USCS §§ 669b to 669g-1.

§ 49-1-59. Repealed.

Repealed by Laws of 1995, ch. 409, § 6, effective from and after passage (approved March 15, 1995).

[Codes, 1942, § 5844-14; Laws, 1972, ch. 314, § 2]

Editor's Note — Former § 49-1-59 was entitled: Reports required for federal assistance.

§ 49-1-60. Insurance covering hunter safety program.

(1) The department is hereby authorized to purchase liability insurance to cover the following:

(a) Any officer in charge and control of an armory used for firearm instruction in the State of Mississippi, as a part of the Mississippi Hunter Safety Program;

(b) Any Mississippi certified hunter and firearm instructor, while participating in the Mississippi Hunter Safety Program; and

(c) Any student participating in hunter safety courses sponsored by the department's Hunter Safety Program and being taught by a hunter safety instructor certified by the department's Hunter Safety Program.

(2) The premium for such liability insurance shall be paid from the Fisheries and Wildlife Fund.

SOURCES: Laws, 1974, ch. 524, §§ 1, 2; Laws, 1982, ch. 365, § 5; Laws, 1985, ch. 474, § 52; Laws, 1986, ch. 438, § 33; Laws, 1987, ch. 483, § 34; Laws, 1988, ch. 442, § 31; Laws, 1989, ch. 537, § 30; Laws, 1990, ch. 518, § 31; Laws, 1991, ch. 618, § 30; Laws, 1992, ch. 491 § 32; Laws, 1995, ch. 409, § 2, eff from and after passage (approved March 15, 1995).

Cross References — Fisheries and wildlife fund, see § 49-5-21.

§§ 49-1-61 through 49-1-63. Repealed.

Repealed by Laws of 1995, ch. 409, §§ 7-9, effective from and after passage (approved March 15, 1995).

§ 49-1-61. [Codes, 1942, § 5844-15; Laws, 1972, ch. 314, § 3]
§ 49-1-62. [En Laws, 1976, ch. 383, § 2]
§ 49-1-63. [Codes, 1942, § 5844-16; Laws, 1972, ch. 314, § 4]

Editor's Note — Former § 49-1-61 was entitled: Administrator of hunter safety, conservation and sportsmanship program.

Former § 49-1-62 was entitled: Appointment and salary of hunter safety officers.

Former § 49-1-63 was entitled: Establishment of public target ranges.

§ 49-1-65. Hunter Education and Training Program Fund.

Any assessments collected under subsection (3) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Hunter Education and Training Program Fund," which shall be expended to defray the expenses of the program as authorized and appropriated by the Legislature. In addition, the Legislature shall annually appropriate from the General Fund a sum to defray the necessary expenses of the program.

SOURCES: Laws, 1976, ch. 383, § 3; Laws, 1978, ch. 384, § 1; Laws, 1982, ch. 365, § 6; Laws, 1990, ch. 329, § 9; Laws, 1995, ch. 409, § 3, eff from and after passage (approved March 15, 1995).

Cross References — Transfer of powers and duties of Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Fisheries and wildlife fund, see § 49-5-21.

Deposit of portion of standard state assessment into the Hunter Education and Training Program Fund, see § 99-19-73.

CHAPTER 2

Department of Environmental Quality

In General 49-2-1
Energy Resources and Conservation. [Repealed]
Environmental Self-Evaluation Reports 49-2-71
Home-Generated Medical Sharps Disposal Education Program 49-2-81

IN GENERAL

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49-2-1. Declaration of purpose.
49-2-2. Definitions.
49-2-3. Repealed.
49-2-4. Department of Environmental Quality; executive director; qualifications.
49-2-5. Commission on Environmental Quality.
49-2-6. Mississippi Commission on Environmental Quality assuming powers and duties of Mississippi Commission on Natural Resources.
49-2-7. Department of Environmental Quality assuming powers and duties of Department of Natural Resources; organization of department; duties.
49-2-9. Commission on Environmental Quality; powers and duties.
49-2-11. Economic and fiscal impact statements; prerequisite to enactment of rule or regulation and notice of action; effect of statements.
49-2-13. Powers and duties of executive director.
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49-2-16. Qualifications for certain office heads.
49-2-17. Assistant for administration.
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49-2-21. Attorney General as counsel to Commission and Department of Environmental Quality; executive director authorized to employ legal counsel.
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49-2-24. Conference suite within Mississippi Technology Transfer Center named in honor of Herman Cowan Glazier, Jr.
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49-2-29. Strategic plan for operations of Department of Environmental Quality.
49-2-31. Comparative risk assessment.

§ 49-2-1. Declaration of purpose.

It is hereby declared to be the intent of the Legislature to conserve, manage, develop and protect our natural resources and wildlife for the benefit of this and succeeding generations by reorganizing the natural resource and wildlife conservation functions of state government into the Mississippi Department of Environmental Quality and the Mississippi Department of Wildlife, Fisheries and Parks thereby providing more effective organizations through which the methods of conserving, managing, developing and protecting our natural resources and wildlife can be analyzed, coordinated and implemented.

SOURCES: Laws, 1978, ch. 484, § 1; Laws, 2000, ch. 516, § 20, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Commission on Environmental Quality, § 49-17-7.

Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, §§ 49-35-1 et seq.

State Permit Board, § 51-3-15.

Brice's Crossroads-Tupelo Battlefield Commission, § 55-15-1.

Confederate Monumental Park Commission, § 55-15-43.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Commerce §§ 95, 97.

CJS. 81A C.J.S., States §§ 75, 76, 251.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

§ 49-2-2. Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Department" means the Mississippi Department of Environmental Quality.

(b) "Commission" means the Mississippi Commission on Environmental Quality.

(c) "Office" means an administrative subdivision of the department.

(d) "Executive director" means the chief officer of the department.

(e) "Environmental self-evaluation report" means any document, including any audit, report, finding, communication, or opinion or any draft of an audit, report, finding, communication or opinion, prepared solely as a part of or in connection with a voluntary self-assessment that is done in good faith, which report is kept and maintained solely within the confines of the evaluated party.

(f) "Voluntary self-evaluation" means a self-initiated internal assessment, audit, or review, not otherwise expressly required by environmental law, of a facility or an activity at a facility, or management systems related to a facility or an activity. A voluntary self-evaluation shall be designed to identify and prevent noncompliance with environmental laws, and improve compliance with environmental laws. In addition, a voluntary self-evaluation must be conducted by an owner or operator of a facility or an employee of the owner or operator or by a private contractor engaged by the owner or operator.

(g) "Environmental law" means any federal, state or local statute, rule or regulation, or any order, award, agreement, release, permit, license, standard or notice from or issued by a federal, state or local court, agency or governmental authority in pursuance thereof.

SOURCES: Laws, 1989, ch. 544, § 134; Laws, 1990, ch. 522, § 27; Laws, 1995, ch. 627, § 3, eff from and after July 1, 1995.

Cross References — Mississippi Department of Natural Resources as meaning Department of Environmental Quality, see § 49-2-7.

§ 49-2-3. Repealed.

Repealed by Laws of 1989, ch. 544, § 131, effective from and after July 1, 1989.

[En Laws, 1978, ch. 484, § 2]

Editor's Note — Former § 49-2-3 provided definitions applicable to this chapter.

§ 49-2-4. Department of Environmental Quality; executive director; qualifications.

(1) There is hereby created the Mississippi Department of Environmental Quality whose offices shall be located in Jackson, Mississippi.

(2) The department shall be headed by an executive director who shall be appointed by and serve at the pleasure of the Governor. The appointment of the executive director shall be made with the advice and consent of the Senate. The executive director may assign to the appropriate bureaus such powers and duties as deemed appropriate to carry out the department's lawful functions. The executive director shall have the following minimum qualifications:

(a) A master's degree in a field related to natural resources, and at least six (6) years' full-time experience in natural resources, including at least three (3) years of management experience; or

(b) A bachelor's degree in a field related to natural resources or administration and at least eight (8) years of full-time work in the field of natural resources, including four (4) years of management experience.

The executive director shall be the chief administrative officer of the department.

SOURCES: Laws, 1989, ch. 544, § 128, eff from and after July 1, 1989.

Cross References — Department of Environmental Quality to continue to use stationery or other supplies of predecessor agency until supplies depleted, see § 7-17-33.

Selection of site for commercial hazardous waste management facility, see §§ 17-18-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement any law administered by the department of Environmental Quality, see § 49-17-25.

Creation of Mississippi Comprehensive Multimedia Waste Minimization Program within the department, see § 49-31-11.

§ 49-2-5. Commission on Environmental Quality.

(1) There is hereby created the Mississippi Commission on Environmental Quality, to be composed of seven (7) persons appointed by the Governor, with the advice and consent of the Senate, for a term of seven (7) years. One (1) person shall be appointed from each congressional district as constituted January 1, 1978, and two (2) members shall be appointed from the state at large. The initial terms of the members from congressional districts shall be for one (1), two (2), three (3), four (4) and five (5) years respectively, and the initial terms of the members from the state at large shall be one (1) for six (6) years and one (1) for seven (7) years. Thereafter, all terms shall be for seven (7) years. The members serving on the predecessor Commission on Natural Resources on June 30, 1989, shall continue to serve as members of the successor Commission on Environmental Quality until the expiration of the term of their appointment to the predecessor commission.

(2) The commission shall elect from its membership a chairman who shall preside over meetings and a vice chairman who shall preside in the absence of the chairman or when the chairman shall be excused.

(3) The commission shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Constitution and shall enter into bond in the amount of Thirty Thousand Dollars ($30,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi before assuming the duties of office. Any member who shall not attend three (3) consecutive regular meetings of the commission shall be subject to removal by a majority vote of the commission members.

(4) The members of the commission shall receive no annual salary, but shall receive per diem compensation as authorized by law for each day devoted to the discharge of official duties, and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

The commission shall be composed of persons with extensive knowledge of or practical experience in at least one (1) of the matters of jurisdiction of the commission.

(5) The commission is authorized and empowered to use and expend any funds received by it from any source for the purposes of this chapter. Such funds shall be expended in accordance with the statutes governing the expenditure of state funds.

SOURCES: Laws, 1978, ch. 484, § 3; Laws, 1980, ch 560, § 22; Laws, 1989, ch. 544, § 130, eff from and after July 1, 1989.

Cross References — Selection of site for commercial hazardous waste management facility, see §§ 17-18-1 et seq.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Allocation of mineral royalties for administration of mineral lease division, see § 29-7-3.

Role of Commission on Environmental Quality in regulating onsite wastewater disposal systems, see §§ 41-67-3 et seq.

Water Pollution Control Revolving Fund, see §§ 49-17-81 et seq.

Duties of commission with respect to Comprehensive Multimedia Waste Minimization Act, see § 49-31-11.

Promulgation of rules and regulations by commission on environmental quality for administration of Surface Coal Mining and Reclamation Law, see § 53-9-11.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-2-6. Mississippi Commission on Environmental Quality assuming powers and duties of Mississippi Commission on Natural Resources.

The Mississippi Commission on Environmental Quality shall be the Mississippi Commission on Natural Resources with the exception of the Bureau of Parks and Recreation, and shall retain all powers and duties granted by law to the Mississippi Commission on Natural Resources with the exception of the Division of Parks and Recreation, and wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

SOURCES: Laws, 1989, ch. 544, § 129, eff from and after July 1, 1989.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-2-7. Department of Environmental Quality assuming powers and duties of Department of Natural Resources; organization of department; duties.

The Department of Environmental Quality shall be the Mississippi Department of Natural Resources with the exception of the Office of Parks and Recreation, and shall retain all powers and duties granted by law to the Mississippi Department of Natural Resources with the exception of the Office of Parks and Recreation, and wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality. The Executive Director of the Department of Environmental Quality may assign to the appropriate offices any powers and duties deemed appropriate to carry out the lawful duties of the department.

The department shall be composed of the following offices:

(a) Office of Geology and Energy Resources;
(b) Office of Land and Water Resources; and
(c) Office of Pollution Control.

Each office shall be composed of the administrative units set forth in the consolidation plan adopted by the commission, subject to changes by the executive director, with approval of the commission, as hereinafter set forth.

The department is designated as the single state department to receive and expend any federal funds being received or expended by any agency transferred to the department by Chapter 484, Laws of 1978, and to receive and expend any federal funds made available for matters within the jurisdiction of the department.

The department shall be responsible for conserving, managing, developing and protecting the natural resources of the State of Mississippi within the jurisdiction of the department, with the exception of functions of the Office of Recreation and Parks. The department shall coordinate all functions of state government related to natural resources within the jurisdiction of the department. The department shall not exercise any of its authority or powers granted under the provisions of this section in a manner which would be inconsistent with the provisions of Section 29-1-1.

SOURCES: Laws, 1978, ch. 484, § 5; Laws, 1989, ch. 544, § 132; Laws, 1990, ch. 522, § 28; Laws, 1993, ch. 615, § 4, eff from and after July 1, 1993.

Editor's Note — For a complete distribution of sections affected by Chapter 484, Laws of 1978, see Allocation of Acts Table in Statutory Tables Volume.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Administration and enforcement of the Solid Wastes Disposal Law of 1974, see §§ 17-17-2, 17-17-27.

Role of the Department of Environmental Quality with respect to promotion of projects for treatment of solid or hazardous wastes, see §§ 17-17-101 et seq.

Development and administration of state nonhazardous solid waste management plan, see §§ 17-17-221 and 17-17-223.

Allocation of mineral royalties for administration of mineral lease division, see § 29-7-3.

Powers and duties of department with respect to bonds issued by the Mississippi Development Bank, see § 31-25-103.

Qualifications for positions of directors of Bureaus of Geology and Energy Resources, Land and Water Resources, and Pollution Control, see § 49-2-16.

Designation of Department of Environmental Quality as primary state agency in entering agreements with National Space Technology Laboratories, see § 49-2-23.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement any law administered by the department of Environmental Quality, see § 49-17-25.

Water Pollution Control Revolving Fund, see §§ 49-17-81 et seq.

Duties and powers of bureau of land and water resources in assisting waterway, river basin and watershed authorities and districts, see § 51-3-16.

Provision authorizing the Tomigbee River Valley Water Management District to transfer title to Trace State Park in Pontotoc County to the Department of Environmental Quality, see § 51-13-111.

Administration of Surface Coal Mining and Reclamation Law by department of environmental quality, see § 53-9-9.

Use of pesticide registration fees by Division of Plant Industry of Department of Agriculture and Commerce and Department of Environmental Quality to carry out program of protecting underground water resources from pesticides, see § 69-23-7.

Use of fertilizer registration fees by Division of Plant Industry of Department of Agriculture and Commerce and Department of Environmental Quality to carry out program of protecting underground water resources from fertilizers, see § 75-47-7.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-2-9. Commission on Environmental Quality; powers and duties.

(1) Effective July 1, 1979, the commission shall have the following powers and duties:

(a) To formulate the policy of the department regarding natural resources within the jurisdiction of the department;

(b) To adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under any and all statutes within the commission's jurisdiction, and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) To commission or conduct studies designed to determine alternative methods of managing or using the natural resources of this state, in a manner to insure efficiency and maximum productivity;

(e) To enter into, and to authorize the executive director to execute with the approval of the commission, contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter; but this authority under this chapter and under any and all statutes within the commission's jurisdiction, except those statutes relating to the Bureau of Recreation and Parks, shall not include contracts, grants or cooperative agreements which do not develop data or information usable by the commission, or which provide goods, services or facilities to the commission or any of its bureaus, and shall exclude any monies for special interest groups for purposes of lobbying or otherwise promoting their special interests; and

(f) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(2) The Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be responsible for program management, procurement, development and maintenance of the Mississippi Digital Earth Model, which should include the following seven (7) core data layers of a digital land base computer model of the State of Mississippi:

(a) Geodetic control;

(b) Elevation and bathymetry;

(c) Orthoimagery;

(d) Hydrography;

(e) Transportation;

(f) Government boundaries; and

(g) Cadastral. With respect to the cadastral layer, the authority and responsibility of the Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be limited to compiling information submitted by counties.

For all seven (7) framework layers, the Mississippi Department of Environmental Quality, Office of Geology and Energy Resources shall be the integrator of data from all sources and the guarantor of data completeness and consistency and shall administer the council's policies and standards for the procurement of remote sensing and geographic information system data by state and local governmental entities.

SOURCES: Laws, 1978, ch. 484, § 6; Laws, 1982, ch. 411, § 5; Laws, 2003, ch. 527, § 3, eff from and after July 1, 2003.

Editor's Note — The "council" referred to in the last paragraph of (2) is the Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems described in § 25-58-21.

Cross References — Administration and enforcement of the Solid Wastes Disposal Law of 1974, see §§ 17-17-2, 17-17-27.

Promulgation of rules and regulations as to standards for production, allowable uses and application rates of compost, see § 17-17-213.

Regulation by commission of disposition of compost not conforming to regulations of commission, see § 17-17-215.

Powers and duties of commission as to Environmental Protection Trust Fund, see § 17-17-217.

Development of criteria for evaluation of local nonhazardous solid waste management plans, see § 17-17-225.

Review and approval of local nonhazardous solid waste management plans, see § 17-17-227.

Adoption of criteria and standards for location and permitting of nonhazardous solid waste management facilities, see § 17-17-229.

Adoption of rules and regulations governing municipal solid waste landfills, see § 17-17-231.

Approval of proof of financial responsibility offered by owners or operators of sanitary landfills, see § 17-17-235.

Power of the commission to promulgate rules, etc. pertaining to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, see § 21-27-207.

Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems established, see § 25-58-21.

Brownfield agreements, authority to promulgate regulations, see § 49-35-21.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-2-11. Economic and fiscal impact statements; prerequisite to enactment of rule or regulation and notice of action; effect of statements.

(1) Prior to the adoption of an environmental rule or regulation by the Commission on Environmental Quality for a new program, the commission shall consider the economic impact and environmental benefits such rule or regulation will have on the citizens and the environment of our state, as well as the fiscal impacts of such rule or regulation on the state and local governmental agencies. This section shall not apply to the adoption of any environmental rule or regulation for a new program which is promulgated pursuant to a state/federal program delegation agreement or contract or which is expressly required by state law.

(2) Prior to giving notice of proposed agency action as required by Section 25-43-7, Mississippi Code of 1972, the commission shall develop a written report providing an economic and fiscal impact statement for the adoption of an environmental rule or regulation for a new program, except as provided in subsection (1) of this section. In developing the economic and fiscal impact statement, the commission shall consult with personnel at the Universities Research Center.

(3) The economic and fiscal impact statement shall include the following:

(a) A description of the need for and the environmental benefits which will likely accrue as the result of the proposed action;

(b) An estimate of the capital cost and the annual cost to the regulated community of implementing the proposed action;

(c) An estimate of any initial cost and annual costs to the department and other state and local governmental entities of implementing and enforcing the proposed action, including the estimated amount of paperwork;

(d) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the commission and a statement of reasons for rejecting those alternatives in favor of the proposed adoption or substantive modification; and

(e) A detailed statement of the data and methodology used in making estimates required by this subsection.

(4) No rule or regulation shall be declared invalid based on a challenge to the economic and fiscal impact statement for the rule or regulation unless the issue is raised in administrative proceedings before the commission. No person shall have standing to challenge a rule or regulation, based upon the economic and fiscal impact statement or lack thereof, unless that person provided the commission with information sufficient to make the commission aware of specific concerns regarding the statement in a public meeting or hearing held by the commission or in written comments regarding the rule or regulation. The grounds for invalidation for an action of the commission, based upon the economic and fiscal impact statement, are limited to the commission's failure to adhere to the procedure for preparation of the economic and fiscal impact

statement as provided in this section, or the commission's failure to consider information submitted to the commission regarding specific concerns about the statement, if such failure substantially impairs the fairness of the rulemaking proceeding.

SOURCES: Laws, 1994, ch. 598, § 2, eff from and after July 1, 1994.

Editor's Note — A former § 49-2-11 [En Laws, 1978, ch. 484, § 7; Repealed by Laws, 1989, ch. 544, § 131, eff from and after July 1, 1989] provided for the position of executive director of the Department of Natural Resources.

Laws of 1994, ch. 598, § 1, eff from and after July 1, 1994, provides as follows:

"SECTION 1. (1) It is the intent of the Legislature to provide protection for the public health and safety and the environment for the citizens of Mississippi. In providing for such protection, the Legislature recognizes that environmental rules and regulations should have an identifiable scientific basis and should be adopted after consideration of the costs to the regulated community of implementing the rule or regulation.

"(2) It is further the intent of the Legislature that environmental rules and regulations be developed which are protective of the environment and can be implemented on a least-cost basis and in a least-intrusive manner."

§ 49-2-13. Powers and duties of executive director.

The executive director shall have the following powers and duties:

(a) To administer the policies of the commission within the authority granted by the commission;

(b) To supervise and direct all administrative and technical activities of the department;

(c) To organize the administrative units of the department in accordance with the plan adopted by the commission and, with commission approval, alter such organizational plan and reassign responsibilities as he may deem necessary to carry out the policies of the commission;

(d) To coordinate the activities of the various offices of the department;

(e) To employ, subject to the approval of the commission, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department;

(f) To recommend to the commission such studies and investigations as he may deem appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(g) To merge and coordinate functions and duties where possible to eliminate the possibility of two (2) separate organizational entities performing the same or similar functions, including, but not limited to, functions of audit, inspection, collection, personnel, motor vehicles, accounting, data processing, payroll and any other such administrative, procedural or enforcement function;

(h) To coordinate all studies in the State of Mississippi concerned with the supply, development, use and conservation of natural resources within the jurisdiction of the department;

(i) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the commission may have;

(j) To issue, modify or revoke any and all orders under authority granted by the commission which include, but are not limited to those which (i) prohibit, control or abate discharges of contaminants and wastes into the air and waters of the state; (ii) require the construction of new disposal systems or air-cleaning devices or any parts thereof, or the modification, extension or alteration of existing disposal systems or air-cleaning devices or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes; (iii) impose penalties pursuant to Section 17-17-29 and Section 49-17-43 which have been agreed upon with alleged violators; and (iv) require compliance with the conditions of any permit issued by the Permit Board created in Section 49-17-28 and all regulations of the commission; and

(k) With the approval of the commission, to enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, provided the agreements do not have a financial cost in excess of the amounts appropriated for such purposes by the Legislature.

SOURCES: Laws, 1978, ch. 484, § 8; Laws, 1982, ch. 411, § 6; Laws, 1987, ch. 332, § 3; Laws, 1988, ch. 312, § 1; Laws, 1989, ch. 544, § 133; Laws, 1990, ch. 522, § 29, eff from and after July 1, 1990.

Cross References — Powers and duties of executive director as to Environmental Protection Trust Fund, see § 17-17-217.

Maintenance of copies of local nonhazardous solid waste management plans and orders relating, thereto, see § 17-17-227.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement any law administered by the department of Environmental Quality, see § 49-17-25.

Powers and duties of the executive director with respect to the underground storage tank act of 1988, see §§ 49-17-401 et seq.

Duties of the executive director with respect to the groundwater protection fund, see § 49-17-405.

Executive Director of Department of Environmental Quality to serve as chief staffperson for Mississippi Water Resources Management Planning Council, see § 51-3-103.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-2-15. Repealed.

Repealed by Laws of 1989, ch. 544, § 131, eff from and after July 1, 1989. [En Laws, 1978, ch. 484, § 9]

Editor's Note — Former § 49-2-15 related to qualifications for directors of bureaus and division chiefs.

§ 49-2-16. Qualifications for certain office heads.

(1) The head of the Office of Geology and Energy Resources shall be a geologist, petroleum engineer or energy engineer of established reputation with a minimum of a bachelor's degree in geology, petroleum engineering or energy engineering or a field related thereto.

(2) The head of the Office of Land and Water Resources shall possess a minimum of six (6) years' experience in a field related to the bureau's function.

(3) The head of the Division of State Land and Water Resources of the Office of Land and Water Resources shall have six (6) years' experience in hydraulics and hydrology.

(4) The head of the Division of Regional Water Resources of the Office of Land and Water Resources shall have a minimum of six (6) years' experience in a field related to the division's function.

(5) The head of the Office of Pollution Control shall have a minimum of six (6) years' experience in a field related to pollution control.

SOURCES: Laws, 1989, ch. 544, § 135; Laws, 1990, ch. 522, § 30, eff from and after July 1, 1990.

§ 49-2-17. Assistant for administration.

Effective July 1, 1979, the executive director shall employ an assistant for administration and shall centralize under his office the following administrative functions for the entire department:

(a) accounting;

(b) payroll;
(c) purchasing;
(d) data processing;
(e) personnel;
(f) motor pool and vehicles;
(g) maintenance;
(h) printing and records; and
(i) public relations.

SOURCES: Laws, 1978, ch. 484, § 10, eff from and after passage (approved April 17, 1978).

§ 49-2-19. Traveling expenses of departmental employees.

All employees of the department, when authorized by the executive director, shall be entitled to transportation, traveling and subsistence expenses while away from the office on official business of the department, in accordance with Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1978, ch. 484, § 19; Laws, 2000, ch. 516, § 21, eff from and after passage (approved Apr. 30, 2000.)

§ 49-2-21. Attorney General as counsel to Commission and Department of Environmental Quality; executive director authorized to employ legal counsel.

The Attorney General shall be counsel and attorney for the commission and the Department of Environmental Quality and shall provide such legal services as may be requested from time to time, without cost. The executive director is hereby authorized to employ such legal counsel as may be necessary or appropriate for the operation of the department.

SOURCES: Laws, 1978, ch. 484, § 20; Laws, 1990, ch. 480, § 1, eff from and after passage (approved March 26, 1990).

§ 49-2-23. Authority to enter agreements with National Space Technology Laboratories.

The Mississippi Department of Natural Resources, as created in Section 49-2-7, is designated as the primary agency of the State of Mississippi that shall enter into such agreements with the National Space Technology Laboratories (NSTL) located in Hancock County, Mississippi, as may be necessary to enable the State of Mississippi to have full access to all information and technical assistance that is made available through the NSTL.

SOURCES: Laws, 1979, ch. 416, § 1, eff from and after July 1, 1979.

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

The National Space Technology Laboratories referred to in this section has been renamed the John C. Stennis Space Center.

§ 49-2-24. Conference suite within Mississippi Technology Transfer Center named in honor of Herman Cowan Glazier, Jr.

The conference suite within the Mississippi Technology Transfer Center at the National Space Technology Laboratories, National Aeronautics and Space Administration, in Hancock County, Mississippi, is hereby named in honor of Herman Cowan Glazier, Jr.; and the Governor's Office of General Services shall have a distinctive plaque placed therein noting the designation provided for by this section.

SOURCES: Laws, 1988, ch. 326, eff from and after passage (approved April 13, 1988).

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 49-2-25. Creation of office of technical resources; supervision.

(1) To assure the access and a proper utilization of assistance provided for in Section 49-2-23, the executive director of the Department of Natural Resources, as provided by Section 49-2-11, is hereby authorized to establish the office of technical resources within the NSTL facility in Hancock County and to direct and supervise the activities of this office and its personnel in a manner that will:

(a) Provide the State of Mississippi, its political subdivisions and its people with an informed access to any and all of the services, skills, information and other capabilities which are available through the various functions of the federal government under its commitment to utilize its technical resources for public benefit.

(b) Promote the transfer and utilization of such technical resources through a positive program of identifying, interpreting and informing potential users of these resources within the State of Mississippi.

(c) Cooperate with all agencies and offices of the federal government and with any other state which share in the same objectives of the office of technical resources.

(d) Manage, supervise and coordinate an orderly flow of these resources to all eligible users who request this service within the jurisdiction of the State of Mississippi.

(2) The executive director of the Department of Natural Resources shall approve any change, acquisition of properties or the hiring of any additional personnel within the office of technical resources.

SOURCES: Laws, 1979, ch. 416, § 2, eff from and after July 1, 1979.

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

The NSTL facility referred to in this section has been renamed the John C. Stennis Space Center.

§ 49-2-27. Repealed.

Repealed by Laws of 1992, ch. 582, § 1, eff July 1, 1993.

[En Laws, 1992, ch. 582, § 1, eff from and after passage (approved May 15, 1992).]

Editor's Note — Former § 49-2-27 was entitled: Commission authorized to obtain motor vehicle liability insurance.

§ 49-2-29. Strategic plan for operations of Department of Environmental Quality.

(1) The Department of Environmental Quality shall develop a strategic plan for its operations. The strategic plan shall cover a five-year period. The plan shall include, at a minimum, the following:

(a) A clearly defined comprehensive statement of the mission, goals and objectives of the agency;

(b) Performance effectiveness objectives (measurable indicators of output and outcome) for each program in the department;

(c) A description of the department's internal management system used to evaluate its performance in relation to projected levels;

(d) Detailed plans and strategies for meeting current and future needs and achieving goals and objectives established for the department;

(e) A description of significant external factors which may affect any projected levels of performance, including an identification of priority and other service populations, or other service measures, under current law and how those populations are expected to change within the period of the plan;

(f) A detailed analysis of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs;

(g) An analysis and estimate of the economic impact on the regulated community of regulations adopted by the Commission on Environmental Quality; and

(h) An analysis of any likely or expected changes in the services provided by the department due to changes in state or federal law.

(2) The department shall revise the plan biennially.

(3) Upon completion of the initial plan and each revision, the department shall provide copies to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chairman of the Senate Environmental Protection, Conservation and Water Resources Committee, the Chairman of the House Conservation and Water Resources Committee, the Legislative Budget Office, the Performance Evaluation and Expenditure Review Committee, the Executive Director of the Department of Finance and Administration and the Legislative Reference Bureau.

(4) Except as otherwise provided in this subsection, the department shall develop the strategic plan before July 1, 1995. However, if the comparative risk assessment required under Section 49-2-31 is initiated before September 1, 1994, the department shall develop the strategic plan before July 1, 1996.

SOURCES: Laws, 1994, ch. 598, § 3; Laws, 2009, ch. 546, § 16, eff from and after passage (approved Apr. 15, 2009.)

§ 49-2-31. Comparative risk assessment.

(1) Before July 1, 1995, the Department of Environmental Quality shall complete a comparative risk assessment that will include consideration of environmental risks to the health and welfare of the citizens of Mississippi and to the environment. The assessment also shall include an examination of environmental factors, public health factors and socioeconomic factors. The department shall provide for public participation in the assessment process.

(2) The requirements of this section shall be contingent upon the receipt of federal funds.

SOURCES: Laws, 1994, ch. 598, § 4, eff from and after July 1, 1994.

ENERGY RESOURCES AND CONSERVATION
[REPEALED]

SEC.
49-2-41 through 49-2-63. Repealed.

§§ 49-2-41 through 49-2-63. Repealed.

Repealed by Laws of 1980, ch. 548, § 19, eff from and after May 26, 1980. [En Laws, 1979, ch. 471, §§ 1-14]

Editor's Note — Former §§ 49-2-41 through 49-2-63 made it the responsibility of the Mississippi Commission on Natural Resources, acting through the bureau of geology and energy resources of the department of natural resources, to develop and promulgate a state energy resources policy, energy conservation plans, thermal and lighting efficiency standards, and rules and procedures for energy efficiency in public procurement of energy consuming commodities.

Current provisions regarding energy resources and conservation are contained in §§ 57-39-1 through 57-39-35.

ENVIRONMENTAL SELF-EVALUATION REPORTS

SEC.
49-2-71. Discovery and admissibility in evidence of environmental self-evaluation reports; divulgence or dissemination of information in reports; exemption from Public Records Act.

§ 49-2-71. Discovery and admissibility in evidence of environmental self-evaluation reports; divulgence or dissemination of information in reports; exemption from Public Records Act.

(1) An environmental self-evaluation report, as defined in Section 49-2-2, is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure or administrative procedure, unless:

(a) The person for whom the environmental self-evaluation report was prepared, irrespective of whether the self-evaluation report was conducted and/or prepared by a private contractor hired by the person, expressly waives the provisions of this section;

(b) The court of record, or hearing officer, who shall be neutral and independent, after in camera review, determines that:

(i) The environmental self-evaluation report shows evidence that the person for which the environmental self-evaluation report was prepared is not or was not in compliance with an environmental law;

(ii) The person did not initiate appropriate efforts to achieve compliance with the environmental law or complete any necessary permit application promptly after the noncompliance with the environmental law was discovered and, as a result, the person did not or will not achieve compliance with the environmental law or complete the necessary permit application within a reasonable amount of time;

(iii) For the purposes of paragraphs (b)(i) and (b)(ii) only, if the evidence shows noncompliance by a person with more than one (1) environmental law, the person may demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person into compliance with all of such environmental laws;

(c) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the environmental self-evaluation report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, or for which the person had been provided written notification that an investigation into a specific violation had been initiated; or

(d)(i) For environmental self-evaluation reports made before January 20, 2003, the court of record or hearing officer, who shall be neutral and independent, determines that even if subject to the privilege, it is found that a condition exists that demonstrates an imminent and substantial hazard or endangerment to the public health and safety or the environment;

(ii) For an environmental self-evaluation report that was made on or after January 20, 2003, the court of record or hearing officer, who shall be neutral and independent, determines that even if subject to the privilege, it is found that a condition exists or existed at the time of the report that demonstrates or demonstrated an imminent and substantial hazard or endangerment to the public health and safety or the environment.

(2) The self-evaluation privilege created by this section does not apply to:

(a) Documents or information required to be developed, maintained or reported pursuant to any environmental law or any other law or regulation; or

(b) Documents or other information required to be made available or furnished to a regulatory agency pursuant to any environmental law or any other law or regulation; or

(c) Information in the possession of a regulatory agency obtained through observation, sampling, monitoring or otherwise and which is subject to public disclosure pursuant to the Mississippi Public Records Act of 1983; or

(d) Information obtained through any source independent of the environmental self-evaluation report; or

(e) Documents existing prior to the commencement of and independent of the voluntary self-evaluation with the exception of evidence establishing a request for compliance assistance to the appropriate government agency or authority.

(3)(a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-evaluation privilege under subsection (1) of this section is applicable to an environmental self-evaluation report or that the privilege does not apply to the environmental self-evaluation report pursuant to the provisions of subsection (2) of this section, then a court of record or hearing officer, who shall be neutral and independent, may allow such party limited access to the environmental self-evaluation report for the purposes of an in camera review only. The court of record or the hearing officer may grant limited access to all or part of the environmental self-evaluation report under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the environmental self-evaluation report. A moving party who obtains access to an environmental self-evaluation report pursuant to the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in an environmental self-evaluation report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in an environmental self-evaluation report that was provided to such person in violation of the provisions of paragraph (a) of this subsection (3), such party or other person is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the person for which the environmental self-evaluation report was prepared. The court or hearing officer also may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common-law privilege.

(5) A person asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of an environmental self-evaluation report has the burden of proving that such privilege does not exist under this section.

(6) All environmental self-evaluation reports that are protected by the self-evaluation privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11, Mississippi Code of 1972.

SOURCES: Laws, 1995, ch. 627, § 2; Laws, 2003, ch. 301, § 1, eff from and after passage (approved Jan. 20, 2003.)

Editor's Note — This section was originally enacted as § 49-2-51 and was renumbered as § 49-2-71 at the direction of the Attorney General in view of the existence of a prior § 49-2-51, which was enacted by Laws of 1979, ch. 471, § 6, and was repealed by Laws of 1980, ch. 548, § 19, effective May 26, 1980.

ATTORNEY GENERAL OPINIONS

The privilege created by the statute extends not only to the document that is the "environmental self-evaluation report," but also to written communications and written opinions associated with the voluntary self-evaluation and facts gathered in preparation for the voluntary self-evaluation. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

"Imminent and substantial hazard or endangerment to the public health and safety or the environment," as used in subection (1)(d), may in fact cover violations that have actually caused serious harm to human health or the environment at the time the court or hearing officer is making that determination, and not just future possible harm or endangerment. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

The existence of a self-evaluation report that includes a report of facts demonstrating a need for injunctive relief does not necessarily prohibit the Commission's exercise of its enforcement authority. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

If a "whistleblower," informant, or witness provides the Commission with information otherwise contained in a self-evaluation report, that person is not subject to sanctions sanctions under subsection (3)(b). Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

A witness must respond to any discovery request that goes to the facts that underlie an environmental self-evaluation report, and only the documents and document preparation communications are protected from discovery. Chisolm, Nov. 21, 2001, A.G. Op. #01-0681.

RESEARCH REFERENCES

ALR. Waiver of evidentiary privilege by inadvertent disclosure—state law. 51 A.L.R.5th 603.

HOME-GENERATED MEDICAL SHARPS DISPOSAL EDUCATION PROGRAM

Sec.

49-2-81. Short title.

49-2-83. Legislative findings.

49-2-85. Definitions.

49-2-87. Development and implementation of home-generated medical sharps disposal education program.

§ 49-2-81. Short title.

Sections 49-2-81 through 49-2-87 shall be known and may be cited as the Home-Generated Medical Sharps Disposal Act.

SOURCES: Laws, 2008, ch. 341, § 1, eff from and after July 1, 2008.

§ 49-2-83. Legislative findings.

The Legislature finds that:

(a) Each year, according to the Environmental Protection Agency, more than three billion medical sharps are used by individuals in their homes.

(b) Typically, these medical sharps are put into the household trash, where they become a health hazard for other members of the household and for sanitation workers.

(c) The hazard includes not only the discomfort of a needle-stick injury, but also the risk of contracting an infectious disease from a contaminated medical sharp.

(d) Regulating the disposal of home-generated medical sharps will further the public health and safety of Mississippi residents.

SOURCES: Laws, 2008, ch. 341, § 2, eff from and after July 1, 2008.

§ 49-2-85. Definitions.

The following words and phrases when used in Sections 49-2-81 through 49-2-87 shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Department" means the Department of Environmental Quality.

(b) "Home-generated medical sharp" means a sharp used by an individual at home.

(c) "Medical sharp" means a needle, syringe, lancet or other sharp object used to penetrate the skin for medical testing or for delivery of medication.

SOURCES: Laws, 2008, ch. 341, § 3, eff from and after July 1, 2008.

Cross References — Department of Environmental Quality generally, see §§ 49-2-1 et seq.

§ 49-2-87. Development and implementation of home-generated medical sharps disposal education program.

(1) The department shall develop and implement a statewide educational program designed to inform the public about safe disposal of home-generated medical sharps and to promote the public's safe disposal of home-generated medical sharps.

(2) The department shall develop the program no later than July 1, 2009, and shall implement the program no later than January 1, 2010.

SOURCES: Laws, 2008, ch. 341, § 4, eff from and after July 1, 2008.

Cross References — Department of Environmental Quality generally, see §§ 49-2-1 et seq.

CHAPTER 3

Fisheries and Wildlife Research

Sec.
49-3-1. Short title.
49-3-3. Purpose of chapter.
49-3-5. Establishment of laboratory.
49-3-7. Maintenance of laboratory.
49-3-9. Functions.
49-3-11. Acceptance of gifts, grants, and contributions.
49-3-13. Cooperation with state agencies.
49-3-15. Work for other organizations.
49-3-17. "Fish" defined; effect of chapter on authority of other agencies.

§ 49-3-1. Short title.

This chapter may be cited as the "Fisheries and Wildlife Management Law of 1970".

SOURCES: Codes, 1942, § 5840-51; Laws, 1970, ch. 276, § 1, eff from and after passage (approved April 3, 1970).

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-3-3. Purpose of chapter.

The Legislature hereby finds and declares:

(a) That the economic progress of Mississippi depends in large measure upon the development and use of the natural resources of the state;

(b) That the fish and game animals indigenous to the state constitute a vital segment of the natural resources available in Mississippi;

(c) That Mississippi has approximately five million (5,000,000) acres of idle agricultural land in the state which are producing mainly broomsedge and brush. Much of this land is potentially excellent game range, yet it is producing almost no significant income for the landowners. These idle acres, plus seventeen million (17,000,000) acres of forest lands properly managed for game and fish products, can contribute substantially to the total economic development of Mississippi;

(d) That there is a tremendous and ever growing need for additional knowledge of fish cultural techniques and the proper management of our environment so that not only fish and game may be increased but that Mississippi may become a more pleasant and a more prosperous state to reside in;

(e) That this chapter is specifically designed to establish a program for the discovery and dissemination of knowledge concerning the management and proper utilization of fish and game resources in Mississippi.

SOURCES: Codes, 1942, § 5840-52; Laws, 1970, ch. 276, § 2, eff from and after passage (approved April 3, 1970).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 29.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-3-5. Establishment of laboratory.

The Board of Trustees of State Institutions of Higher Learning is hereby authorized and directed to establish a fisheries and wildlife laboratory at Mississippi State University under the direction of the president and such other administrative authorities within the university as such board of trustees may determine.

SOURCES: Codes, 1942, § 5840-53; Laws, 1970, ch. 276, § 3, eff from and after passage (approved April 3, 1970).

§ 49-3-7. Maintenance of laboratory.

The board of trustees of state institutions of higher learning shall provide for such laboratory such buildings, equipment, personnel, supplies and service as it shall determine to be necessary for the proper operation and maintenance of such laboratory, having due regard for the contributory facilities and programs already existing at Mississippi State University.

SOURCES: Codes, 1942, § 5840-54; Laws, 1970, ch. 276, § 4, eff from and after passage (approved April 3, 1970).

§ 49-3-9. Functions.

It shall be the function of the laboratory to conduct a program of research in the culture of fish, the diagnosis and treatment of fish and game animal diseases and the physiology and nutrition of fish and game animals, and to disseminate its findings to the public and to all individuals and agencies for whom such knowledge will be helpful and useful.

SOURCES: Codes, 1942, § 5840-55; Laws, 1970, ch. 276, § 5, eff from and after passage (approved April 3, 1970).

§ 49-3-11. Acceptance of gifts, grants, and contributions.

In addition to the appropriations made by the Mississippi Legislature for the operation and support of the laboratory, the board of trustees of state institutions of higher learning is authorized and empowered to receive contributions, donations, gifts and grants of money and/or property, equipment, materials or manpower from persons, foundations, trust funds, corporations, organizations, the federal government or any subdivision thereof, the state government or any subdivision thereof, to be expended by the board in carrying out the purposes and objectives of this chapter.

SOURCES: Codes, 1942, § 5840-56; Laws, 1970, ch, 276, § 6, eff from and after passage (approved April 3, 1970).

§ 49-3-13. Cooperation with state agencies.

The laboratory personnel shall cooperate fully with the colleges and universities of the state, the Mississippi State Department of Agriculture and Commerce, and the Mississippi Department of Wildlife, Fisheries and Parks in an effort to fully effectuate the purpose of this chapter. All state agencies and departments are hereby authorized and directed to give the laboratory and its personnel their full cooperation in every possible manner.

SOURCES: Codes, 1942, § 5840-57; Laws, 1970, ch. 276, § 7; Laws, 2000, ch. 516, § 22, eff from and after passage (approved Apr. 30, 2000.)

§ 49-3-15. Work for other organizations.

The laboratory personnel may, at their discretion, and subject to the approval of the proper administrative authorities at Mississippi State University, do research on a contract or project basis for industries, governmental agencies, public or private organizations or corporations, or any others, at a price and on a basis to be determined by the aforesaid personnel. The proceeds derived from such research projects shall be deposited to a special fund in the treasury of the state of Mississippi to be known as the "fisheries and wildlife laboratory fund," to be disbursed and used pursuant to appropriation approved by the Legislature as provided by law.

SOURCES: Codes, 1942, § 5840-58; Laws, 1970, ch. 276, § 8; Laws, 1984, ch. 488, § 231, eff from and after July 1, 1984.

§ 49-3-17. "Fish" defined; effect of chapter on authority of other agencies.

The word "fish" as appears in this chapter shall mean "fresh water fish". The provisions of this chapter shall not amend, repeal or diminish the authority heretofore vested in the Mississippi Commission on Marine Resources or the work and function of the Gulf Coast Research Laboratory.

SOURCES: Codes, 1942, § 5840-59; Laws, 1970, ch. 276, § 9; Laws, 1994, ch. 578, § 57, eff from and after July 1, 1994.

Cross References — Gulf Coast Research Laboratory, see § 37-101-21.
Mississippi Commission on Marine Resources, see §§ 49-15-301 et seq.

CHAPTER 4

Mississippi Department of Wildlife, Fisheries and Parks

Sec.	
49-4-1.	Declaration of purpose.
49-4-3.	Definitions.
49-4-4.	Mississippi Commission on Wildlife, Fisheries and Parks.
49-4-5.	Repealed.
49-4-6.	Department of Wildlife, Fisheries and Parks; organization of department; executive director; removal for cause; office heads; merit promotion system for certain enforcement officers.
49-4-7.	Commission to appoint advisory committees; department designated to receive federal funds; department to manage and coordinate all functions related to wildlife and fisheries.
49-4-8.	Powers and duties of department.
49-4-9.	Powers and duties of Department of Wildlife, Fisheries and Parks.
49-4-11.	Qualifications of executive director.
49-4-13.	Powers and duties of executive director.
49-4-15.	Repealed.
49-4-17.	Repealed.
49-4-19.	Traveling expenses of departmental employees.
49-4-21.	Attorney General as counsel to Commission and Department of Wildlife, Fisheries and Parks.
49-4-22.	Maintaining court records and abstracts of game and fish law violations.
49-4-23.	Repealed.
49-4-25.	Repealed.
49-4-27.	Repealed.
49-4-29.	Repealed.
49-4-31.	Hunter safety officers to investigate hunting accidents; law enforcement officer authorized to request that person involved in hunting accident resulting in injury or death submit to chemical test for presence of alcohol.
49-4-33.	Repealed.
49-4-35.	Marked and unmarked department vehicles; violations and penalties.
49-4-37.	North Mississippi fish hatchery; establishment; operation.
49-4-39.	Regulation of hunting, fishing and wildlife viewing, guide and outfitter services.
49-4-41.	Regulation of the feeding of wild animals and game birds outside of wildlife enclosures.

§ 49-4-1. Declaration of purpose.

It is hereby declared to be the intent of the Legislature to conserve, manage, develop and protect our natural resources and wildlife for the benefit of this and succeeding generations by reorganizing the natural resource and wildlife conservation functions of state government into the Mississippi Department of Environmental Quality and the Mississippi Department of Wildlife, Fisheries and Parks thereby providing more effective organizations through which the methods of conserving, managing, developing and protecting our natural resources and wildlife can be analyzed, coordinated and implemented.

SOURCES: Laws, 1978, ch. 484, § 1; Laws, 2000, ch. 516, § 23, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Assumption of powers of marine conservation commission, see § 49-15-11.

Assumption of powers of marine resources council, see § 57-15-3.

Assumption of powers of boat and water safety commission, see § 59-21-111.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Commerce §§ 95, 97.

CJS. 81A C.J.S., States §§ 75, 76, 251.

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-4-3. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(b) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(c) "Executive director" means the chief officer of the department.

SOURCES: Laws, 1978, ch. 484, § 11; Laws, 1989, ch. 544, § 114; Laws, 1990, ch. 522, § 31; Laws, 1996, ch. 412, § 2, eff from and after passage (approved March 21, 1996).

§ 49-4-4. Mississippi Commission on Wildlife, Fisheries and Parks.

(1) There is hereby created the Mississippi Commission on Wildlife, Fisheries and Parks, to be composed of five (5) persons appointed by the Governor, with the advice and consent of the Senate, for a term of five (5) years. One (1) person shall be appointed from each congressional district. The initial terms of the members shall be one (1), two (2), three (3), four (4) and five (5) years, respectively. Thereafter, all terms shall be for five (5) years. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be made from the respective congressional district for the unexpired term only.

(2) The commission shall elect from its membership a chairman who shall preside over meetings and a vice-chairman who shall preside in the absence of the chairman or when the chairman shall be excused.

(3) The commission shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Constitution, and shall enter into bond in the amount of Thirty Thousand Dollars ($30,000.00) to be approved by the Secretary of State, conditioned according to law, and payable to the State of Mississippi before assuming the

duties of office. Any member who shall not attend three (3) consecutive regular meetings of the commission shall be subject to removal by a majority vote of the commission members.

(4) The members of the commission shall receive no annual salary but shall receive per diem compensation as authorized by law for each day devoted to the discharge of official duties and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

The commission shall be composed of persons with a demonstrated history of involvement in at least one (1) of the matters of jurisdiction of the commission and whose employment and activities are not in conflict. All of the Commissioners shall be an active outdoorsman holding a resident hunting or fishing license in at least five (5) of the ten (10) years preceding appointment. A member shall not have a record of conviction of violation of fish or game laws and regulations within five (5) years preceding appointment or a record of any felony conviction.

(5) The commission shall have the power to adopt, amend and repeal such regulations and rules as may be necessary for the operation of the department.

(6) The commission shall have the power and authority to issue all licenses and permits under the jurisdiction of the department.

(7) In the furtherance of its duties and responsibilities, the commission may conduct hearings, gather testimony and perform other functions required to carry out its powers and duties as prescribed by statute.

(8) The commission shall have all power for conserving, managing and developing wildlife and fishery resources except for saltwater aquatic life and marine resources under the jurisdiction of the Mississippi Commission on Marine Resources.

SOURCES: Laws, 1989, ch. 544, § 121; Laws, 1994, ch. 578, § 27, eff from and after July 1, 1994.

Cross References — Transfer of functions of Mississippi Commission on Wildlife Conservation to the Commission on Wildlife, Fisheries and Parks, see § 49-1-3.

Transfer of functions of Department of Wildlife Conservation to Department of Wildlife, Fisheries and Parks, see § 49-1-4.

Department of Wildlife, Fisheries and Parks, see § 49-4-6.

Mississippi Park Commission as meaning Mississippi Department of Wildlife, Fisheries and Parks, see § 55-3-31.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-4-5. Repealed.

Repealed by Laws of 1989, ch. 544, § 120, eff from and after July 1, 1989.

[En Laws, 1978, ch. 484, § 12; Laws, 1980, ch. 560, § 23; Laws, 1988, ch. 325]

Editor's Note — Former § 49-4-5 created the Mississippi Commission on Wildlife Conservation, the functions of which have been transferred to the Commission on Wildlife, Fisheries and Parks by § 49-1-3.

§ 49-4-6. Department of Wildlife, Fisheries and Parks; organization of department; executive director; removal for cause; office heads; merit promotion system for certain enforcement officers.

(1) There is hereby created the Mississippi Department of Wildlife, Fisheries and Parks, whose principal office shall be located in Jackson, Mississippi.

(2) The department shall be headed by an executive director who shall be appointed by the Governor. The commission shall submit to the Governor three (3) qualified nominees for the position of executive director. The Governor shall appoint the executive director from the list of qualified nominees submitted with the advice and consent of the Senate. The executive director may assign those powers and duties as deemed appropriate to carry out the department's lawful functions. Upon recommendation by the Governor to the commission, the executive director may be removed from office only by both a majority vote of the membership of the commission and the Governor's approval of the removal. To remove the executive director the commission must determine on sound evidence that there is good cause for removal such as willful dereliction in carrying out the duties of executive director, obvious malfeasance in his actions as executive director or conviction of any criminal act. After the determination is made by the commission that the executive director should be removed from office, the commission shall notify the Governor of its determination and the Governor must approve that determination before the executive director is actually removed from office.

(3) The executive director shall appoint heads, who will serve at the pleasure of the executive director.

(4) The executive director shall have the authority to organize the department as deemed appropriate to carry out the responsibilities of the department. The organizational charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(5) The executive director shall develop and implement a merit promotion system for all sworn law enforcement officers. Promotion to higher rank shall be based on an individual's merit and length of service. The executive director shall implement the merit promotion system before July 1, 1995.

SOURCES: Laws, 1989, ch. 544, § 108; Laws, 1990, ch. 522, § 32; Laws, 1993, ch. 574, § 1; Laws, 1994, ch. 528, § 1; Laws, 1994, ch. 628, § 1; Laws, 1996, ch. 412, § 1, eff from and after passage (approved March 21, 1996).

Cross References — Powers and duties of executive director, see § 49-1-29.

Powers and duties of the department, see § 49-4-8.

Transfer of functions of commission on natural resources, bureau of recreation and parks to this department, see § 55-3-31.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-4-7. Commission to appoint advisory committees; department designated to receive federal funds; department to manage and coordinate all functions related to wildlife and fisheries.

The commission shall establish and appoint advisory committees for Parks and Recreation and Wildlife and Fisheries. The advisory committees shall aid the commission in formulating policies, discussing problems and considering other matters related to these areas as designated by the commission.

The department is designated as the single state agency to receive and expend any federal funds made available for matters within the jurisdiction of the department.

The department shall be responsible for conserving, managing, developing and protecting the wildlife and freshwater fisheries resources of the state. The department shall coordinate all functions of state government related to wildlife and fisheries resources that are within the jurisdiction of the department.

SOURCES: Laws, 1978, ch. 484, § 13; Laws, 1989, ch. 544, § 115; Laws, 1999, ch. 585, § 7, eff from and after July 1, 1999.

Cross References — General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

Allocation from Gulf and wildlife protection fund for pollution clean-up or control related to oil or gas exploration or production, see § 29-7-3.

Mineral exploration and testing within Mississippi Sound or tidelands, see § 29-7-3.

Powers and duties of Bureau of Marine Resources with respect to public trust tidelands, see § 29-15-17.

Additional powers, duties and responsibilities of department, see § 49-4-9.

Authorization of marine resources commission to regulate matters pertaining to marine aquatic life, see § 49-15-15.

Authority of the Attorney General and the Department of Wildlife, Fisheries and Parks to enforce conservation easements, see § 89-19-7.

§ 49-4-8. Powers and duties of department.

The Department of Wildlife, Fisheries and Parks shall have the following powers and duties:

(a) To conserve, manage, develop and protect the wildlife of the State of Mississippi.

(b) To take charge and have full jurisdiction and control over all state parks.

(c) To cooperate with other entities and agencies in developing and implementing such plans as necessary for the conservation, protection, beautification and improvement of the quality of the environment and living natural resources.

SOURCES: Laws, 1989, ch. 544, § 109, eff from and after July 1, 1989.

RESEARCH REFERENCES

Practice References. Mississippi Wildlife, Fisheries and Parks Law Book (LexisNexis).

§ 49-4-9. Powers and duties of Department of Wildlife, Fisheries and Parks.

Effective July 1, 1979, the Department of Wildlife, Fisheries and Parks shall have the following powers and duties:

(a) To formulate the policy of the department regarding wildlife and fisheries within the jurisdiction of the department;

(b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(c) To commission or conduct studies designed to determine alternative methods of managing and conserving the wildlife and fisheries resources of this state in a manner to insure efficiency and sustained productivity;

(d) To receive the advice and counsel of the advisory committees created for the Division of Parks and Recreation and the Division of Wildlife and Fisheries; and

(e) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

SOURCES: Laws, 1978, ch. 484, § 14; Laws, 1989, ch. 544, § 116, eff from and after July 1, 1989.

Editor's Note — Laws of 1992, ch. 332, § 2, effective from and after passage (approved April 20, 1992), provides as follows:

"SECTION 2. The Mississippi Department of Wildlife, Fisheries and Parks is authorized in its discretion to exchange lands with the Mississippi State Highway Department on behalf of the Mississippi Department of Wildlife, Fisheries and Parks. The real property to be conveyed to the Mississippi State Highway Department is described as follows:

"PARCEL NO. 2.

"Begin at a point on the present easterly right-of-way line of Interstate Highway No. 55 that is 158 feet easterly of and perpendicular to the centerline of the northbound lane of said highway at Station 199+50, as shown on the plans for State Project No. 79-0056-01-035-11, from said point of beginning run thence northerly a distance of 1040 feet more or less to a point that is 200 feet easterly of and perpendicular to said centerline at Station 210+00; thence northerly a distance of 102 feet more or less to a point that is 215 feet easterly of and perpendicular to said centerline at Station 211+00; thence northerly a distance of 100 feet more or less to a point that is 215 feet easterly of and perpendicular to said centerline at Station 212+00; thence northerly a distance of 105 feet more or less to a point that is 245 feet easterly of and perpendicular to said centerline at Station 213+00; thence northerly a distance of 100 feet more or less to a point that is 260 feet easterly of and perpendicular to said centerline at Station 214+00; thence northerly a distance of 100 feet to a point that is 260 feet easterly of and perpendicular to said centerline at Station 215+00; thence northerly a distance of 203 feet more or less to a point that is 325 feet easterly of and perpendicular to said centerline at Station 217+00; thence northeasterly a distance of 302 feet more or less to a point on the present easterly right-of-way line of said highway that is easterly of and perpendicular to said centerline at Station 220+00; thence northeasterly a distance of 450 feet more or less to a point that is 255 feet southerly of and perpendicular to the centerline of survey of Lakeland Drive (Mississippi Highway No. 25) at Station 44+50 as shown on the plans for said project; thence northeasterly a distance of 50 feet more or less to a point that is 220 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 44+80; thence northeasterly a distance of 57 feet more or less to a point that is 200 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 45+35; thence easterly a distance of 82 feet more or less to a point that is 185 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 46+25; thence easterly a distance of 147 feet more or less to a point that is 180 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 47+75; thence southeasterly a distance of 70 feet more or less to a point that is 240 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 48+ 11/51 BK = Station 9+94.30AH; thence easterly a distance of 105 feet to a point that is 240 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 11+00; thence northeasterly a distance of 62 feet more or less to a point that is 190 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 11+50; thence easterly a distance of 175 feet more or less to a point that is 200 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 13+25; thence easterly a distance of 320 feet more or less to a point that is 128 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 14+50; thence southeasterly a distance of 230 feet more or less to a point that is 335 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 16+50; thence easterly a distance of 250 feet more or less to a point that is 290 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 19+00; thence northeasterly a distance of 270 feet more or less to a point that is 105 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 21+00; thence easterly a distance of 305 feet more or less to a point that is 90 feet southerly of and perpendicular to the centerline of survey of said Lakeland Drive at Station 24+01.59; thence easterly along a line that is parallel with and 90 feet southerly of the centerline of survey of said project a distance of 350 feet more or less to the east property line of the Mississippi Department of Wildlife, Fisheries and Parks Property; thence northerly along said property line a distance of 35 feet more or less to the present southerly right-of-way line of said Lakeland Drive; thence westerly and southerly along the present southerly right-of-way line of said Lakeland Drive and the present easterly right-of-way line of Interstate Highway No.

55, a distance of 5000 feet more or less, to the point of beginning, containing 5.68 acres more or less, and being situated in the East Half of the Southeast Quarter of Section 26, and the North Half of the Southwest Quarter of Section 25, Township 6 North, Range 1 East, City of Jackson, First Judicial District of Hinds County, Mississippi."

Laws of 1993, ch. 348, § 1, effective July 1, 1993, provides as follows:

"SECTION 1. The Mississippi Department of Wildlife, Fisheries and Parks is authorized, in its discretion, to sell to the Mississippi State Highway Department a parcel of land located in Leake County, Mississippi, being more particularly described as follows:

"Begin at a point on the present Westerly right-of-way line of Mississippi Highway No. 35, said point being 25 feet Northeasterly of and perpendicular to the centerline of Federal Aid Project No. 11-0023-02-028-10 at Station 524 + 22.29, said point also being 1425.4 feet North of and 489.7 feet west of the Southeast corner of the Northeast ¼ of Section 24, Township 10 North, Range 7 East; from said point of beginning run thence in a Southeasterly direction along the said present Westerly right-of-way line, a distance of 11.5 feet to a South line of grantor's property; thence North 89 degrees 00′ West along said South line, a distance of 21.0 feet to a Westerly line of grantor's property; thence North 19 degrees 52′ West along said Westerly line, a distance of 150.6 feet to another South line of grantor's property; thence North 89 degrees 00′ West along said South line, a distance of 5.3 feet to a point on the centerline of said project at Station 525 + 70.71; thence continuing along said South line North 89 degrees 00′ West, a distance of 96.2 feet; thence North 19 degrees 44' West, a distance of 462.3 feet, more or less, to a point in the center of the Pearl River; thence north 87 degrees 01′ east with the center of the Pearl River, a distance of 120.1 feet, more or less, to the said present Westerly right-of-way line; thence South 19 degrees 44′ East along said present right-of-way line, a distance of 610.2 feet to the point of beginning and containing 1.30 acres, more or less, and all being situated in and a part of the South ½ of the Northeast ¼ of the Northeast ¼ of Section 24, Township 10 North, Range 7 East, Leake County, Mississippi."

Laws of 1994, ch. 481, §§ 1, 2, effective July 1, 1994, provide as follows:

"SECTION 1. The Mississippi Department of Wildlife, Fisheries and Parks is authorized, in its discretion, to sell and convey to the City of Jackson, Hinds County, Mississippi, or to any interested person, group, organization, company or corporation, certain state-owned real property for not less than fair market value as determined by the averaging of at least two (2) appraisals by Mississippi certified general appraisers, and upon certain terms and conditions herein provided, the property is described as follows:

"Hinds County Tax Parcel 409-1, located in the Northwest quadrant of the intersection of Cardinal Street and Ridgeway Street, in the City of Jackson, Hinds County, Mississippi.

"SECTION 2. Any conveyance executed pursuant to Section 1 of this act shall contain a provision reserving unto the State of Mississippi all oil, gas and mineral rights of every kind and character, with the rights of ingress and egress to remove same."

Laws of 1998, ch. 479, § 2, effective March 26, 1998, provides as follows:

"SECTION 2. Section 1, Chapter 481, Laws of 1994, is amended as follows:

"SECTION 1. The Mississippi Department of Wildlife, Fisheries and Parks is authorized, in its discretion, to sell and convey to the City of Jackson, Hinds County, Mississippi, or to any interested person, group, organization, company or corporation, or to exchange for property of equal value with the City of Jackson, certain state-owned real property for not less than fair market value as determined by the averaging of at least two (2) appraisals by Mississippi certified general appraisers, and upon certain terms and conditions herein provided, the property is described as follows:

"Hinds County Tax Parcel 409-1, located in the Northwest quadrant of the intersection of Cardinal Street and Ridgeway Street, in the City of Jackson, Hinds County, Mississippi."

Laws of 2007, ch. 310, §§ 1 and 2 provide:

“SECTION 1. The Legislature finds that in 2004 several state parks were requiring substantial subsidies from the General Fund, and the Mississippi Commission on Wildlife, Fisheries and Parks was directed to promptly dispose of those parks through closure, lease, sale or transfer. The Nanih Waiya State Park was one of those state parks to be promptly disposed of by the commission. Nanih Waiya is the site of a sacred mound of the Choctaw Nation and on lands ceded to the United States by the Choctaw Nation under the Treaty of Dancing Rabbit Creek. The Nanih Waiya Mound is venerated by the Choctaws and the site is considered to be the birthplace of the Choctaws. The Mississippi Band of Choctaw Indians desires to have this site of great historical significance to the Choctaws returned to them. The Legislature finds that it is in the public interest to return this historical site of the Choctaw Indians to the Mississippi Band of Choctaw Indians.

“SECTION 2. The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall take any and all actions necessary to donate and to convey the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians. The executive director of the department is authorized to execute any document or instrument to accomplish the donation and conveyance of the park.”

Laws of 2007, ch. 316, § 1 provides:

“SECTION 1. (1) The Department of Wildlife, Fisheries and Parks is hereby authorized to transfer and convey to the Department of Marine Resources certain state-owned real property, known as the ‘Lyman Fish Hatchery’ located in Harrison County, Mississippi, and more specifically described as follows:

“PARCEL ONE

“TOWNSHIP SIX (6) SOUTH, RANGE ELEVEN (11) WEST, ST. STEPHENS MERIDIAN: In Section 17, part of the W ½ and in Section 20, part of the NE ¼ of the NW ¼ and all of the E ½ of the NW ¼ of the NW ¼, all more particularly described as follows:

“BEGINNING at Corner 1, the south sixteenth corner between sections 18 and 17, in the center line of old U.S. Highway No. 49, a point; thence along the center line of said highway with six (6) courses, N 0° 11′ E, 223.74 feet, N 2° 27′ E, 660.00 feet, N. 7° 52′ E, 324.06 feet, N 3° 54′ E, 477.18 feet, N 15° 02′ E, 785.40 feet, N 14° 39′ E, 1461.90 feet, to Corner 2, the intersection of the center line of said highway with the center line of Little Biloxi River, a point; thence with two courses of said river, S 25° 48′ E, 958.32 feet, S 69° 15′ E, 231.0 feet to Corner 3, a point; thence S 0° 25′ E, with part of the east boundary of the NW ¼ of the NW ¼ 246.18 feet to Corner 4, the northwest sixteenth corner of said Section 17, a 1-¼′ x 42′ I.P.; thence S 89° 55′ E, 61.84 feet to Corner 5, the intersection of the south boundary of the NE ¼ of the NW ¼ of said Section 17 with the west right of way boundary of the Illinois Central Railroad, a 1-¼′ x 42′ I.P.; thence with five (5) lines along said west right of way boundary, S 14° 27′ E, 3784.44 feet to Corner 6, a point; S 13° 28′ E, 260.04 feet to Corner 7, a point; S 9° 33′ E, 158.40 feet to Corner 8, a point; S 5° 50′ E, 578.82 feet to Corner 9, a concrete post marked ‘1 COR 4 TR 4 1951’; S 5° 31′ E, 687.82 feet to Corner 10, a concrete post marked ’BOUNDARY MON NO. — 1934’; thence S 89° 45′ W, 1921.26 feet to Corner 11, a concrete post marked ‘FISHERIES BOUNDARY MON NO. — 1934’; thence N 1° 57′ E, 691.02 feet to Corner 12, a concrete post marked ‘2 COR 3TR 4 1951’; thence N 1° 57′ E, 690.36 feet to Corner 13, 1 1-½′ x 42′ I.P.; thence N 2° 06′ E, 1304.72 feet to corner 14, a concrete post marked ‘BOUNDARY MON NO. — 1934’; thence S 88° 51′ W, 702.24 feet to the place of beginning, containing 214.66 acres, more or less.

“(2) Upon the transfer of the property described in subsection (1), the Department of Wildlife, Fisheries and Parks and the Department of Marine Resources may agree to a certain period of transition in which the duties of the management and operations of the fish hatchery are transferred.”

Laws of 2010, ch. 509, § 4, provides:

“SECTION 4. (1) The Mississippi Commission on Wildlife, Fisheries and Parks is authorized to donate and convey that property located in Hinds County, Mississippi, known as 'Lake Dockery,' to the newly incorporated City of Byram, Mississippi, the property being more particularly described as follows:

"Beginning at the Southeast corner of Section 11, Township 4, Range 1 West, thence North 25° 04′ West, a distance of 921 feet to the point of beginning; thence at an angle of 46° 00′ right, a distance of 337.5 feet; thence at an angle of 37° 11′ left, a distance of 200 feet; thence at an angle of 7° 14′ right, a distance of 233 feet; thence at an angle of 14° 54′ left, a distance of 329 feet; thence at an angle of 13° 37′ left, a distance of 490 feet; thence at an angle of 17° 02′ right, a distance of 395 feet; thence at an angle of 40° 21′ left, a distance of 337 feet; thence at an angle of 31° 00′ left, a distance of 273 feet; thence at an angle of 2° 34′ right, a distance of 512 feet; thence at an angle of 62° 30′ left, a distance of 312 feet; thence at an angle of 21° 18′ left, a distance of 200 feet; thence at an angle of 20° 12′ left, a distance of 836 feet; thence at an angle of 88° 02′ right, a distance of 284 feet; thence at an angle of 9° 25′ left, a distance of 324 feet; thence at an angle of 132° 23′ left, a distance of 594 feet; thence at an angle of 55° 52′ right, a distance of 569 feet; thence at an angle of 71° 41′ left, a distance of 757 feet; thence at an angle of 33° 04′ right, a distance of 355 feet; thence at an angle of 83° 30′ left, a distance of 921 feet to point of beginning, containing 80.5 acres more or less.

"(2) The authority to donate and convey the property in this section shall include the authority to convey the property in fee simple subject to any prior reservations. The conveyance to be made shall also include the enrollment of Lake Dockery in the 'Community Assistance Program' of the Department of Wildlife, Fisheries and Parks to provide technical assistance to the City of Byram in the management of the fishery at Lake Dockery and such other assistance as may be necessary from time to time."

Laws of 2011, ch. 507, § 2 provides:

"SECTION 2. (1) The Department of Finance and Administration, acting on behalf of the Mississippi Department of Wildlife, Fisheries and Parks, is authorized to donate and convey to the Board of Supervisors of Coahoma County, Mississippi, all title and interest in certain real property accepted by and under the possession and control of the Department of Wildlife, Fisheries and Parks known as Moon Lake Park, being a total of 645 acres, more or less, lying and being situated in Coahoma County, Mississippi, more specifically described as follows:

"Tract I

"That portion of Sectional Lots 6, 7, 9, 10 and 15 South and West of Highway 49 in Section 35, Township 30 North, Range 3 West, Less and Except:

"That part of Section Lots 9 and 15 deeded to the Mississippi Department of Transportation found in Book 799, Pages 470, and less that approximate 4 acre parcel found at Book 836, Page 252 of the Land Records of Coahoma County, all of the above being located in Coahoma County, Mississippi.

"And

"Tract II

"Commencing at the Southeast Corner of Section 27, Township 30 North, Range 3 West, Coahoma County, Mississippi; thence North 0 degrees 22 minutes 29 seconds East along the East side of said Section, 2146.10 feet to a point on the South right-of-way of U.S. Highway No. 49 W; thence North 35 degrees 57 minutes 34 seconds West along said right-of-way, a distance of 721.62 feet to a point at the intersection of the West right-of-way of a railroad and said highway right-of-way and being the POINT OF BEGINNING of the land herein described; thence South 31 degrees 23 minutes 53 seconds West along said railroad right-of-way, a distance of 1131.93 feet to a point; thence North 0 degrees 43 minutes 07 seconds East, 1639.48 feet to a point on said highway right-of-way; thence South 61 degrees 10 minutes 53 seconds East along said right-of-way, 106.54 feet to a point; thence South 35 degrees 57 minutes 34 seconds East along said right-of-way, 500.00 feet to a point; thence North 54 degrees 02 minutes 26 seconds East along said right-of-way, 20.00 feet to a point; thence South 35 degrees 57 minutes 34 seconds East along said right-of-way, 282.71 feet to the POINT OF

BEGINNING and containing 11.20 acres more or less and all being in the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27, Township 30 North, Range 3 West, Coahoma County, Mississippi.

"(2) The conveyance authorized in subsection (1) of this section shall be conditional upon the Commission on Wildlife, Fisheries and Parks certifying by resolution that the projects described in Section 26, Chapter 522, Laws of 2003, have been abandoned and any monies deposited in the 2003 Moon Lake State Park Fund shall be applied to pay the debt service on the bonds issued under Sections 25 through 40, Chapter 522, Laws of 2003."

Cross References — Mineral exploration and testing on state wildlife management areas, lakes or fish hatcheries, see § 29-7-3.

Additional powers, duties and responsibilities of department, see § 49-4-7.

Powers and duties of the Department with respect to the Motor Vehicle and Boat Replacement Program, see §§ 49-6-1 et seq.

Assumption of powers of marine conservation commission, see § 49-15-11.

Payment of penalties for shrimping during closed season to the Department of Marine Resources, see § 49-15-64.

Authority of the commission to establish the maximum number of crab pots allowable per licensee, see § 49-15-91.

Assumption of powers of marine resources council, see § 57-15-3.

Assumption of powers of boat and water safety commission, see § 59-21-111.

§ 49-4-11. Qualifications of executive director.

The executive director shall possess a combination of educational qualifications, experience and skills that clearly demonstrate the ability to manage a multifunctional agency. The minimum qualifications for the position of executive director are as follows:

(a) A master's degree in one (1) of the management functions of the agency, wildlife or fisheries conservation, parks and recreation or related sciences or a master's degree in public or business administration and at least six (6) years' experience in a public or private organization with administrative management functions similar to those of the agency. At least three (3) of the six (6) years' experience must be in a position with administrative management responsibilities, including personnel supervision and budget management; or

(b) A bachelor's degree in wildlife or fisheries conservation, biology, parks and recreation, forestry, agriculture or related sciences or a bachelor's degree in public or business administration and at least eight (8) years' experience in a public or private organization with administrative management functions directly related to those of the agency, with four (4) of those years in an administrative management position with personnel supervision and budget management responsibilities.

SOURCES: Laws, 1978, ch. 484, § 15; Laws, 1989, ch. 544, § 117; Laws, 1994, ch. 628, § 2, eff from and after July 1, 1994.

Cross References — Membership of executive director on nuclear waste technical review committee, see § 57-49-11.

§ 49-4-13. Powers and duties of executive director.

Effective July 1, 1979, the executive director of the Department of Wildlife, Fisheries and Parks shall have the following powers and duties:

(a) To supervise and direct all administrative and technical activities of the department;

(b) To employ, subject to the approval of the commission, qualified professional personnel in the subject matter or fields, and such other technical and clerical staff as may be required for the operation of the department;

(c) To coordinate all studies in the State of Mississippi concerned with the supply, development, use and conservation of wildlife, fisheries and parks;

(d) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department, including a detailed statement of expenditures of the department and any recommendations the department may have;

(e) To enter into cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with studies and investigations pertaining to wildlife, fisheries and parks, provided the agreements do not have a financial cost in excess of the amounts appropriated for such purposes by the Legislature;

(f) In his discretion, to enter into an affinity relationship with a credit card issuer and to expend funds derived therefrom to improve wildlife management areas; and

(g) To carry out all regulations and rules adopted by the commission and enforce all licenses and permits issued by the commission.

SOURCES: Laws, 1978, ch. 484, § 16; Laws, 1989, ch. 544, § 118; Laws, 1996, ch. 389, § 1, eff from and after passage (approved March 19, 1996).

Cross References — Authority of the Attorney General and the Department of Wildlife, Fisheries and Parks to enforce conservation easements, see § 89-19-7.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 49-4-13(b) stating that executive director of Department of Wildlife, Fisheries and Parks is authorized to "employ", subject to approval of commission, qualified professional personnel in subject matter or fields, and such other technical and clerical staff as may be required for operation of Department, word "employ" should be construed according to ordinary and popular usage of term as equivalent to definition "to initially hire." Polles, Jan. 14, 1993, A.G. Op. #92-0911.

§ 49-4-15. Repealed.

Repealed by Laws of 1996, ch. 405, § 4, eff from and after passage (approved March 21, 1996).

[Laws, 1978, ch. 484, § 17; Laws, 1989, ch. 544, § 119; Laws, 1990, ch. 522, § 33, Laws, 1993, ch. 574, § 2]

Editor's Note — Former § 49-4-15 was entitled: Qualifications of office heads.

§ 49-4-17. Repealed.

Repealed by Laws of 1989, ch. 544, § 120, eff from and after July 1, 1989.

[En Laws, 1978, ch. 484, § 18]

Editor's Note — Former § 49-4-17 provided for the employment of an assistant for administration.

§ 49-4-19. Traveling expenses of departmental employees.

All employees of the department, when authorized by the executive director, shall be entitled to transportation, traveling and subsistence expenses while away from the office on official business of the department, in accordance with Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1978, ch. 484, § 19; Laws, 2000, ch. 516, § 24, eff from and after passage (approved Apr. 30, 2000.)

§ 49-4-21. Attorney General as counsel to Commission and Department of Wildlife, Fisheries and Parks.

The Attorney General shall be counsel and attorney for the commission and Department of Wildlife, Fisheries and Parks. The Attorney General shall designate one (1) of his deputies or assistants to be counsel and attorney for the commission and the department in all actions, proceedings and hearings. The deputy or assistant so designated shall be legal advisor of the commission and the department in all matters relating to the commission and the department and to the powers and duties of its officers.

SOURCES: Laws, 1978, ch. 484, § 20; Laws, 1990, ch. 480, § 2, eff from and after passage (approved March 26, 1990).

§ 49-4-22. Maintaining court records and abstracts of game and fish law violations.

(1) Every court shall keep a record of the proceedings of every case in which a person is charged with any violation of game and fish laws or regulations.

(2) Unless otherwise sooner required by law, within forty-five (45) days after the conviction of a person upon a charge of violating any game or fish law or regulation the clerk of the court shall prepare and immediately forward to

the Department of Wildlife, Fisheries and Parks an abstract of the record of the court and the abstract must be certified by the person so authorized to prepare the same to be true and correct.

(3) The abstract must be made upon a form approved by the Department of Wildlife, Fisheries and Parks, and shall include the name and address of the party charged, the number of the uniform citation, the nature of the offense, the date of hearing, the plea, the judgment, and if the fine was satisfied by prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture, as the case may be.

(4) The Department of Wildlife, Fisheries and Parks shall keep copies of all abstracts for a period of at least three (3) years at its main office and the record shall be open to public inspection during reasonable business hours.

SOURCES: Laws, 1998, ch. 344, § 1, eff from and after July 1, 1998.

Cross References — General fines and penalties for game and fish law violations, see § 49-7-101.

Penalties for Class I violations of game and fish laws, see § 49-7-141.

Penalties for Class II violations of game and fish laws, see § 49-7-143.

§ 49-4-23. Repealed.

Repealed by Laws of 1989, ch. 334, § 1, eff from and after March 7, 1989.

[En Laws, 1980, ch. 528; Laws, 1984, ch. 488, § 232]

Editor's Note — Former § 49-4-23 dealt with the sale of timber in the Pascagoula River Wildlife Management Area and created the Wildlife Heritage Timber Fund.

Section 341, ch. 488, Laws, 1984, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 49-4-25. Repealed.

Repealed by Laws of 1994, ch. 578, § 65, eff from and after July 1, 1994.

[Laws, 1984, ch. 410]

Editor's Note — Former § 49-4-25 was entitled: Saltwater recreational fishing record list. For similar provisions, see § 49-15-309.

§ 49-4-27. Repealed.

Repealed by Laws of 1995, ch. 409, § 10, eff from and after passage (approved March 15, 1995).

[En Laws, 1985, ch. 445, § 2]

Editor's Note — Former § 49-4-27 was entitled: Hunter education courses.

§ 49-4-29. Repealed.

Repealed by Laws of 1994, ch. 578, § 65, eff from and after July 1, 1994. [Laws, 1988, ch. 548, § 1]

Editor's Note — Former § 49-4-29 was entitled: Sanctuaries to protect fishing resources. For similar provisions, see § 49-15-321.

§ 49-4-31. Hunter safety officers to investigate hunting accidents; law enforcement officer authorized to request that person involved in hunting accident resulting in injury or death submit to chemical test for presence of alcohol.

(1) Upon notification by a duly authorized law enforcement officer of a death or injury that occurred by use of a weapon by any person engaged in hunting, a hunter safety officer of the department shall immediately initiate an investigation of the incident and shall submit a report to the executive director of the department. The executive director shall submit the report to the commission. If the commission determines there is probable cause to believe that the incident occurred as a result of culpable negligence on the part of the person causing the death or injury, the commission shall notify the district attorney of the circuit court district in which the incident occurred.

(2) A law enforcement officer may request that the person who causes serious bodily injury or death to another person by use of a weapon submit to a chemical test for determining the presence of alcohol or other drugs.

SOURCES: Laws, 1989, ch. 546, § 1; Laws, 1995, ch. 409, § 4; Laws, 2006, ch. 553, § 1, eff from and after July 1, 2006.

§ 49-4-33. Repealed.

Repealed by Laws of 1994, ch. 578, § 65, eff from and after July 1, 1994. [Laws, 1990, ch. 531, § 1; Laws, 1991, ch. 618, § 31; Laws, 1992, ch. 491 § 33; Laws, 1993, ch. 399, § 1]

Editor's Note — Former § 49-4-33 was entitled: Authority to purchase insurance on department aircraft; immunity waived to extent of insurance coverage. For similar provisions, see § 49-15-311.

§ 49-4-35. Marked and unmarked department vehicles; violations and penalties.

(1) The Department of Wildlife, Fisheries and Parks shall distinctively mark all vehicles used by conservation officers to enforce game and fish laws. Vehicles used for law enforcement purposes shall have the words "Law Enforcement" printed in bold letters in a color which is in contrast with the color of the vehicle, under the official insignia of the department.

(2) The department may authorize the use of unmarked vehicles when identifying marks would hinder official investigations by the department.

(3) Any person who knowingly and wilfully violates this section is guilty of a misdemeanor and is punishable as provided in Section 25-1-91, Mississippi Code of 1972.

SOURCES: Laws, 1992, ch. 526, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

ALR. Validity of roadblocks by state or local officials for purpose of enforcing fish or game laws. 87 A.L.R.4th 981.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

CJS. 36A C.J.S., Fish § 29.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 7.

Cross References — Conservation officers generally, see §§ 49-1-9 through 49-1-44.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 49-4-37. North Mississippi fish hatchery; establishment; operation.

(1) The Department of Wildlife, Fisheries and Parks may establish and operate a fish hatchery in North Mississippi at a site to be determined by the department with the approval of the commission to enable the department to adequately stock public lakes and streams in North Mississippi. For such purpose, the department shall use those funds that are made available by any agency of the state or federal government, an appropriation by the Legislature or any other source. The department is designated as the governing authority of any such fish hatchery and the operation and maintenance of the fish hatchery shall meet the standards of the department and state law regarding the operation of a fish hatchery. The department may accept funds from any source and those funds shall be used to pay the maintenance, operational and administrative expenses of the fish hatchery.

(2) The Tombigbee River Valley Water Management District is authorized to transfer to the Department of Wildlife, Fisheries and Parks fee title of no more than eighty (80) acres of approved replacement land to be surveyed from the following tract of land:

The Northeast Quarter of the Northwest Quarter of Section 20, Township 12, Range 8, Monroe County, Mississippi, containing 40 acres more or less.

All that land in the Northeast Quarter; north of a line starting at monument stamped "LA-42A"; and running northeasterly to a monument stamped "LA-43", Section 20, Township 12, Range 8, Monroe County, Mississippi, containing 105.42 acres more or less.

The land shall be transferred once an acceptable lease agreement between the Mississippi Department of Wildlife, Fisheries and Parks and the U.S. Army Corps of Engineers is secured and the department is given the authority and appropriation to construct a fish hatchery.

(3) The Mississippi Department of Wildlife, Fisheries and Parks shall have the authority to transfer the land necessary to reach the equal value for

lands offered by the U.S. Army Corps of Engineers for the construction of a fish hatchery.

SOURCES: Laws, 1994, ch. 446, § 1, eff from and after passage (approved March 21, 1994).

§ 49-4-39. Regulation of hunting, fishing and wildlife viewing, guide and outfitter services.

The commission may regulate hunting, fishing and wildlife viewing, guide and outfitter services. The commission shall have the following powers and duties:

(a) Prescribe the form and type of licenses;

(b) Establish fees for the types of licenses; the fee for guide services licenses not to exceed One Hundred Fifty Dollars ($150.00); the fee for outfitters licenses not to exceed Two Hundred Fifty Dollars ($250.00); and

(c) To exercise all powers and make any regulations necessary to regulate such services.

SOURCES: Laws, 1997, ch. 549, § 1; reenacted and amended, Laws, 1998, ch. 310, § 1; Laws, 1999, ch. 311, § 1, eff from and after passage (approved Mar. 8, 1999.)

§ 49-4-41. Regulation of the feeding of wild animals and game birds outside of wildlife enclosures.

(1)(a) The Commission on Wildlife, Fisheries and Parks shall regulate the feeding of wild animals and game birds outside of wildlife enclosures and shall have plenary authority in matters related to such feeding of wild animals and game birds.

(b) The authority to regulate feeding shall not apply to planted food plots and natural habitat management.

(c) The authority to regulate feeding under this section shall not apply to wildlife enclosures.

(2) The commission may take any action it deems necessary and may use its emergency powers to prevent, control or eradicate disease resulting from the feeding of wild animals and game birds.

(3) A violation of this section or any regulation of the commission promulgated to prevent, control or eradicate disease is a Class II violation and is punishable as provided in Section 49-7-143.

SOURCES: Laws, 2007, ch. 600, § 2, eff from and after July 1, 2007.

CHAPTER 5

Fish, Game and Bird Protection and Refuges

In General 49-5-1
Powers and Duties of Commission on Wildlife, Fisheries and Parks 49-5-61
Nongame and Endangered Species Conservation 49-5-101
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IN GENERAL

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§ 49-5-1. Public lands.

(1) All lands belonging to the State of Mississippi whether held in fee or in trust by the state, are hereby declared forest reserves and wild life refuges

so long as the state so owns them, and no wild life shall be taken thereon except under regulations of the commission.

(2) Every public park, golf course and play ground, containing as much as fifty (50) acres, shall constitute, and is hereby declared to be a sanctuary or preserve for the protection and propagation of bird and animal life.

(3) The Secretary of State, by and with the consent and approval of the Attorney General and the commission, is hereby authorized and empowered to lease, for a term not exceeding twenty (20) years, the cut-over, swamp and overflowed lands belonging to the state and unsuitable for cultivation, for the purpose of establishing game and fish preserves, but the lease of such land for game preserve purposes shall not be applied to tracts of land of less than one thousand (1,000) acres of contiguous lands.

Such a lease shall provide that the lessee or lessees of the cut-over, swamp or overflowed land shall not cut any timber for commercial purposes or permit waste thereof or of the lands and shall not include the right to mine the oil, gas and minerals on or under the said land. As a consideration for the lease, the Secretary of State, by and with the consent of the Attorney General and the commission, shall contract that the lessee or lessees shall at all times protect the state's interest in and to the timber growing on the leased lands.

However, nothing in this subsection shall prevent the state from selling at any time any timber or any of said lands so leased, or leasing and/or drilling such lands for gas, oil, and/or minerals.

Furthermore, nothing in this subsection shall prevent the homesteading of any lands so leased.

SOURCES: Codes, 1930, § 3879; 1942, §§ 5835, 5860, 5923; Laws, 1924, ch. 323; Laws, 1932, chs. 123, 130; Laws, 2000, ch. 516, § 26, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Duties and powers of Secretary of State, see § 7-11-11.

Issuance of permits for scientific purposes, see § 49-1-41.

Posting of refuges, see § 49-5-19.

Establishment of wildlife restoration projects in cooperation with federal government, see § 49-5-25.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-5-2. Definitions.

For purposes of this chapter, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "Executive director" means the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

SOURCES: Laws, 2000, ch. 516, § 25, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-3. Boards of supervisors may add to preserve.

The board of supervisors of any county may add additional territory to any bird and game preserve or sanctuary by an order entered on their minutes defining the boundaries of the same, and such additional territory shall be subject to all the provisions of this chapter.

SOURCES: Codes, 1930, § 3883; 1942, § 5839; Laws, 1924, ch. 323.

§ 49-5-5. Unlawful to hunt on preserve.

It shall be unlawful for any person to hunt with gun or dog on any sanctuary or preserve for bird and game, or to rob or destroy the nests of any birds, or to catch, snare, trap, or net any birds within any such prescribed limits, and any person, found with gun or dog on or within such prescribed limits, shall be prima facie presumed to be hunting in violation of this section.

SOURCES: Codes, 1930, § 3880; 1942, § 5836; Laws, 1924, ch. 323.

Cross References — Penalty for violation of this section, see § 49-5-39.
Arrest of persons for violating this section, see § 49-5-43.
Requirements for hunting and fishing license, see §§ 49-7-3 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

CJS. 36A C.J.S., Fish § 24-26.

§ 49-5-7. What birds protected.

(1) No wild bird other than a game bird or introduced pheasants which are hereby classified as domestic fowl shall be pursued, taken, wounded, killed, captured, possessed or exported at any time, dead or alive. No part of the plumage, skin or body of any bird protected by this section or of any birds coming from without the state, the importation of which is prohibited into the United States, shall be sold or had in possession for sale in this state.

No person shall molest, take or destroy or attempt to molest, take or destroy the nests or eggs of any wild bird, or have such nests or eggs in his possession, except under the authority of a permit duly issued for scientific purposes.

(2) This section shall not apply to game birds for which there is an open season under state law or introduced pheasants; birds, or parts thereof

collected or possessed under the authority of a certificate duly issued for scientific purposes; or to the English sparrow (Passer domesticus), red-winged blackbird (Agelaius phoeniceus), rusty blackbird (Euphagus carolinus), Brewer's blackbird (Euphagus cyanocephalus), grackles (Quiscalus sp.), brown-headed cowbird (Molothrus ater), European starling (Sturnus vulgaris) or crows (Corvus sp.) or to the nests or eggs of such unprotected birds. Nor shall anything contained in this section prohibit any person on his own land or land under his control from killing or controlling any English sparrow (Passer domesticus), red-winged blackbird (Agelaius phoeniceus), rusty blackbird (Euphagus carolinus), Brewer's blackbird (Euphagus cyanocephalus), grackles (Quiscalus sp.), brown-headed cowbird (Molothrus ater), European starling (Sturnus vulgaris) or crows (Corvus sp.) or any bird by nature destructive of gardens, crops or property of any kind when such birds are committing or about to commit depredation upon ornamental or shade trees, agricultural crops, livestock, or wildlife or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. This section does not authorize and shall not be construed to authorize the killing of any migratory birds protected by the Migratory Bird Treaty Act.

SOURCES: Codes, 1930, § 3882; 1942, §§ 5838, 5868, 5869; Laws, 1924, ch. 323; Laws, 1932, ch. 123; Laws, 1948, ch. 252, § 1; Laws, 1970, ch. 284, § 1; Laws, 1971, ch. 315, § 1; Laws, 2000, ch. 368, § 2; Laws, 2001, ch. 553, § 1, eff from and after passage (approved Apr. 7, 2001.)

Cross References — Issuance of permits for scientific purposes, see § 49-1-41.

Posting of refuges, see § 49-5-19.

Protection of bird nests and eggs, see § 49-7-73.

Federal Aspects — Migratory Bird Treaty Act, see 16 U.S.C.S. §§ 703-712.

RESEARCH REFERENCES

ALR. Liability for injury to property inflicted by wild animal. 57 A.L.R.2d 242.

Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-5-9. Waterfowl included within term "game."

As used in Sections 49-5-11 to 49-5-19, the term "game" shall also include waterfowl.

SOURCES: Codes, 1942, § 5844-25; Laws, 1962, ch. 181, § 7, eff from and after passage (approved June 1, 1962).

§ 49-5-11. Game and fish management projects or refuges; purchase of lands.

In addition to the powers and duties now conferred upon the commission, the commission may, in its discretion, purchase by negotiation, contract by option to purchase, provided the option is exercised within a period of ten (10) years from the time executed, the land necessary and requisite for the construction and maintenance of game and fish management projects or game and fish hunting and fishing refuge.

SOURCES: Codes, 1942, § 5844; Laws, 1932, ch. 123; Laws, 1946, ch. 423, § 3; Laws, 1947, 1st Ex Sess ch. 41; Laws, 1948, ch. 255, § 2; Laws, 1950, ch. 215; Laws, 1954, ch. 175, §§ 1, 2; Laws, 1956, ch. 148; Laws, 1958, ch. 176; Laws, 1962, ch. 181, § 1; Laws, 1966, ch. 261, § 1; Laws, 1970, ch. 279, § 1; Laws, 1973, ch. 378, § 1 (s); Laws, 2000, ch. 516, § 27, eff from and after passage (approved Apr. 30, 2000.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by inserting the words "the commission" so that "In addition to the powers and duties now conferred upon the commission may, in its discretion, purchase..." reads "In addition to the powers and duties now conferred upon the commission, the commission may, in its discretion, purchase..." The Joint Committee ratified this correction at its August 16, 2012, meeting.

Cross References — Establishment of fish and game management areas on land leased from superintendent of prisons, see § 47-5-56.

Regulation of shooting preserves, see §§ 49-11-1 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-5-13. Wildlife management projects or refuges; regulation and management; lease of lands.

(1) The commission may adopt rules and regulations regulating public hunting and fishing in any wildlife conservation management projects or wildlife conservation hunting and fishing refuges constructed under this chapter, and may prescribe and collect fees for the privilege of hunting and fishing in such projects and shall have general authority to operate such wildlife conservation management areas or refuges.

(2) The commission may adopt such rules and regulations that may be necessary for the management and control of such wildlife conservation management areas or refuges.

(3) The Department of Finance and Administration may lease any lands other than woodlands owned by the state within wildlife conservation management areas as long as such lands are not within the boundaries of the used portions of such areas and so long as such lands are leased as provided for in

subsections (4) and (5) of this section. The rental from any such lease is to be paid to the commission and expended as hereinafter provided.

(4) The commission shall recommend to the Department of Finance and Administration the number of acres of land within wildlife conservation management areas which should be leased to private entities. The Department of Finance and Administration shall have the authority to lease for agricultural purposes that land so recommended for not less than one (1) nor more than five (5) years. The Department of Finance and Administration shall lease the lands for cash rent only. The Department of Finance and Administration shall reserve and exclude from any such lands the hunting rights on the lands at all times after the crops are harvested and until the lands are again planted.

(5) It shall be the duty of the Department of Finance and Administration to lease such lands at public contract upon the submission of two (2) or more sealed bids to the Department of Finance and Administration after having advertised such land for rent in a newspaper of general circulation published in the county in which the land is located, or if no newspaper be published in said county, then in a newspaper having a general circulation therein, for a period of not less than two (2) successive weeks. The first publication shall be made not less than ten (10) days prior to the date of such public contract, and the last publication shall be made not more than seven (7) days prior to such date. The Department of Finance and Administration shall have the authority to reject any and all bids. If all bids on a tract or parcel of land are rejected, the Department of Finance and Administration may then advertise for new bids on that tract or parcel of land. Successful bidders shall take possession of their leaseholds at such time authorized by the Department of Finance and Administration. Provided, however, rent shall be due no later than the day upon which the lessee shall assume possession of the leasehold, and shall be due on the anniversary date for each following year of the lease. The Department of Finance and Administration shall have the rights and remedies for the security and collection of such rents given by law to landlords. Upon the execution of the leases as authorized by this section, the leased land shall be liable to be taxed as other lands are taxed during the continuance of the lease, but in case of sale thereon for taxes, only the title of the leaseholder or his heirs or assigns shall pass by the sale.

SOURCES: Codes, 1942, § 5844-21; Laws, 1962, ch. 181, §§ 2, 3; Laws, 1980, ch. 423; Laws, 1984, ch. 488, § 233; Laws, 2000, ch. 516, § 28, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 341, ch. 488, Laws of 1984, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

RESEARCH REFERENCES

ALR. Standing to sue for violation of state environmental regulatory statute. 66 A.L.R.4th 685.

§ 49-5-13.1. Department to develop and implement safety program for hiking, horseback riding and walking trails in wildlife management areas during gun season.

(1) The department shall clearly designate and mark hiking, horseback riding and walking trails on state-owned wildlife management areas. The department shall develop and implement a safety program and regulations for the use of the trails during any gun season.

(2) The department is directed to enter into a memorandum of understanding with the USDA Forest Service to develop and implement a safety program and regulations for the use of hiking, horseback riding and walking trails during any gun season in wildlife management areas on national forest lands.

SOURCES: Laws, 2010, ch. 523, § 2, eff from and after July 1, 2010.

§ 49-5-14. Fox preserve or refuge; contracts with private landowners in Yalobusha or Grenada counties.

In addition to the powers and duties now conferred upon the Commission on Wildlife, Fisheries and Parks, the commission may, in its discretion, establish the land in Yalobusha County or Grenada County necessary and requisite for the construction and maintenance thereon of a fox preserve or refuge. The commission also may enter into contracts with private landowners for the purpose of designating certain portions of land in Yalobusha County and Grenada County as a fox preserve or refuge.

SOURCES: Laws, 1998, ch. 438, § 1, eff from and after July 1, 1998.

§ 49-5-15. Contracts with counties for joint support and maintenance of projects or refuges.

The commission may contract with any county or counties in which such a game and fish management project or game and fish hunting and fishing refuge may be located or any municipality located in such county, for the joint support and maintenance thereof so that the cost of acquisition, construction and maintenance of such project may be borne jointly by such agencies. The commission may use any revenues from the sale of timber, mineral leases on such land, any donations made to such a project by any agency of the federal government or the State of Mississippi or fees collected for permits granted for hunting and fishing thereon toward financing same.

SOURCES: Codes, 1942, § 5844-22; Laws, 1962, ch. 181, § 4; Laws, 2000, ch. 516, § 29, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-16. Construction of lodges.

The commission may enter into agreements with counties in which game and fish wildlife management areas are located, and to accept monies from the counties, the federal government, or from any other sources, for the construction and operation of lodges on lands owned by the commission. The lodges shall be controlled and operated by the commission.

SOURCES: Codes, 1942, § 5844-31; Laws, 1972, ch. 354, § 1; Laws, 2000, ch. 516, § 30, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-17. Issuance and retirement of bonds.

Bonds may be issued by any municipality or county as now authorized by Section 55-9-1 to secure funds to purchase the required lands and to construct game and fish management projects, all of which shall be done under the direction of the commission. Such bonds shall be retired by the proceeds of ad valorem taxes levied by such counties and municipalities, and the commission may pledge to the payment of such bonds any funds accruing to it under this chapter.

SOURCES: Codes, 1942, § 5844-23; Laws, 1962, ch. 181, § 5; Laws, 2000, ch. 516, § 31, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-19. Posting of refuges.

Notices or sign boards not less than one (1) foot square, warning all persons against hunting, trapping, or fishing, or trespassing thereon for that purpose, shall be conspicuously posted by the executive director, or under his direction, close to and along the entire boundary of any refuge, sanctuary, rest ground, lake or stream, or portion thereof, closed to hunting or fishing by order of the commission, in such number as the executive director may deem necessary.

No order of the commission closing any area to hunting, trapping or fishing shall become effective until such order has been published in the manner required by Section 49-1-45 and copy of the order, certified by the secretary of the commission, shall be filed in the office of the sheriff of the county or counties in which such closed area is located.

No person shall take or destroy any animal, bird, or fish, or bird's nest or egg, or eggs or spawn of fish in any refuge, sanctuary, rest ground, or other area closed to hunting, trapping or fishing by order of the commission, but it shall be lawful for a duly accredited employee of the state or of the federal government to take predatory animals or birds on any such closed area.

SOURCES: Codes, 1942, § 5847; Laws, 1932, ch. 123; Laws, 1954, ch. 171; Laws, 2000, ch. 516, § 32, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Issuance of permits for scientific purposes, see § 49-1-41.
Enforcement of game and fish regulations, see § 49-1-43.
Hunting on lands of others, see § 49-7-79.
Penalties for trespass, see §§ 97-17-85 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 26.

CJS. 36A C.J.S., Fish §§ 20, 39.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 12.

§ 49-5-21. Fisheries and Wildlife Fund created; annual budget requests to Legislature.

(1) The department shall transfer all funds under its control into a special fund in the State Treasury to be segregated and known as the "Fisheries and Wildlife Fund," which fund can only be expended as authorized by the Legislature for the purposes for which the department was created. All funds derived from the sale of licenses, fees, fines and other revenues received by the department as provided by law, shall be deposited in the Fisheries and Wildlife Fund. The interest obtained thereon from any investment or deposit made pursuant to Section 27-105-33, Mississippi Code of 1972, shall be credited by the State Treasurer to the Fisheries and Wildlife Fund and shall not be paid into the General Fund of Mississippi.

(2) The department may expend such sums as are authorized by the Legislature from the Fisheries and Wildlife Fund for paying salaries of its employees, operating and maintaining equipment and for any other purpose the department is authorized to expend funds by law, which amount shall be available for expenditure.

The money herein authorized shall be paid by the State Treasurer out of the Fisheries and Wildlife Fund on warrants issued by the Executive Director of the Department of Finance and Administration upon requisition signed by the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

(3) The department shall prepare and submit annually to the Legislature a budget for its proposed operation. The budget required shall reflect all anticipated revenues from all sources, including all grants and matching funds, together with all proposed expenditures. The budget shall be prepared in the same manner as is now required of other departments of this state. The department shall be subject to budgetary control and audit in the same manner as is provided by law for other departments and agencies. Nothing in this section shall be construed as requiring legislative appropriation of such Fisheries and Wildlife Fund, but it is intended that expenditure of such funds shall be under authority of the budget approved as herein provided and as authorized by the Legislature.

SOURCES: Codes, 1942, § 5862.5; Laws, 1952, ch. 192, §§ 1-3; Laws, 1970, ch. 282, § 1; Laws, 1976, ch. 475; Laws, 1982, ch. 365, § 1; Laws, 1984, ch. 488,

§ 234; Laws, 2000, ch. 516, § 33, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Salaries of conservation officers, see §§ 49-1-13.

Reimbursement for premiums on fidelity bonds, see § 49-1-21.

Proceeds from sales of skins or pelts of contraband animals, see § 49-1-37.

Use of all funds, see § 49-1-51.

Premiums for liability insurance covering hunter safety program, see § 49-1-60.

Disposition of penalty assessment for support of hunter safety program, see § 49-1-65.

Sharing in expenses of United States Bureau of Biological Survey, see § 49-5-35.

Disposition of fines and penalties collected for violations of fish, game and bird protection laws, see § 49-5-51.

Funding for conservation of nongame and endangered species, see § 49-5-103.

Deposit of the difference in fee for lifetime and golden lifetime licenses into the wildlife endowment fund, see § 49-7-153.

Disposition of fees for licenses to catch, take or kill mussels, see § 49-9-11.

Disposition of revenues from fish and game refuges and preserves, see § 55-3-15.

Disposition of fees for certificates of number for vessels, see § 59-21-25.

Disposition of proceeds from sales of confiscated boats, motors and trailers, see § 59-21-33.

Disposition of fines and penalties collected for violations of Mississippi Boating Law of 1960, see § 59-21-155.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-5-23. Federal regulatory authority; cooperative agreements with United States.

Consent is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the State of Mississippi as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An Act to Enable Any State to Cooperate With Any Other State or With the United States for the Protection of the Watersheds of Navigable Streams and to Appoint a Commission for the Acquisition of Lands for the Purpose of Conserving the Navigability of Navigable Rivers," and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereof.

The executive director shall have the right and authority to enter into a cooperative agreement with the United States government, or with the proper authorities thereof, for the protection and management of the wildlife resources of the national forest lands within the State of Mississippi and for the restocking of the same with desirable species of game, birds, and other animals, and fish.

SOURCES: Codes, 1942, § 5926; Laws, 1938, ch. 179; Laws, 2000, ch. 516, § 34, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Regulation of open season for migratory birds, see § 49-7-31.

Federal Aspects — The federal Act of March 1, 1911 (36 Stat. 961), referred to in this section, is codified principally at 16 U.S.C. §§ 480, 500, 515 through 519, 521, 552, and 563.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 32.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-5-25. Wildlife restoration.

The State of Mississippi hereby assents to the provisions of the Pittman-Robertson Wildlife Restoration Act of 1937 (Public Law No. 415, 75th Congress, 1st Session), and the Dingell-Johnson Sport Fish Restoration Act of 1950 (Public Laws 681, 81st Congress), and the commission may perform any acts as may be necessary to ensure the conservation of fish and wildlife. Revenue from hunting and fishing license sales shall be under the exclusive control of the state fish and wildlife agency for the sole use of the administration of the state fish and wildlife agency, which includes only the functions required to manage the agency and the fish and wildlife-related resources for which the agency has authority under state law.

SOURCES: Codes, 1942, § 5927; Laws, 1938, Ex Sess ch. 39; Laws, 1948, ch. 255, § 11; Laws, 1956, ch. 154; Laws, 2000, ch. 516, § 35; Laws, 2012, ch. 419, § 1, eff from and after passage (approved Apr. 18, 2012.)

Amendment Notes — The 2012 amendment rewrote the section.

Cross References — Public lands for wildlife projects, see § 49-5-1.

Federal Aspects — The federal Act to Provide that the United States Shall Aid the State in Wildlife Restoration Projects, and for Other Purposes (Public Law No. 415, 75th Congress, 1st Session; ch. 899, 50 Stat. 917), referred to in this section, is codified at 16 U.S.C.S. §§ 669 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-27.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

§ 49-5-27. Repealed.

Repealed by Laws of 2012, ch. 419, § 2, effective and in force from and after passage (approved April 18, 2012).

§ 49-5-27. [Codes, 1942, § 5927.3; Laws, 1952, ch. 188, §§ 1, 2; Laws, 2000, ch. 516, § 36, eff from and after passage (approved Apr. 30, 2000.)]

Editor's Note — Former § 49-5-27 provided Mississippi's assent to the provisions of the Fish Restoration and Management Projects Act. For similar present provisions, see § 49-5-25.

§ 49-5-29. Federal migratory bird refuges.

Consent of the State of Mississippi is hereby given to the acquisition by the United States by purchase, lease or gift of such land in Mississippi as in the opinion of the federal government and the governor of the state may be needed for the establishment of national migratory bird refuges in this region. The state shall retain a concurrent jurisdiction with the United States in and over such lands, reserving to the state in a ceded territory full civil and criminal jurisdiction concurrently with the federal government in all violations of the state and federal laws so that civil process in all cases and such criminal process as may issue under the authority of the state against a person charged with the commission of any crime, without or within such jurisdiction, may be executed thereon in like manner as before the passage of this section. Power is hereby conferred on Congress to pass such laws as it may deem necessary to the acquisition as herein provided for incorporation in said national migratory bird refuges of such forest covered or cutover lands lying in Mississippi as, in the opinion of the federal government, may be needed. The power is hereby conferred upon Congress to pass such laws and to make or provide for the making of such rules of both civil and criminal nature, and providing punishment for violation thereof, as in its judgment may be necessary for the management, control, or protection of such land as may from time to time be acquired by the United States under the provisions of this section.

SOURCES: Codes, 1930, § 4751; 1942, § 5928.

JUDICIAL DECISIONS

1. In general.

The authorization contained in this section [Code 1942, § 5928] permitting the acquisition by "purchase, lease or gift" means substantially the same thing as do the identical words in the Federal Migratory Bird Conservation Act of 1929, and therefore authorizes the federal government to acquire land by condemnation. Swan Lake Hunting Club v. United States, 381 F.2d 238 (5th Cir. 1967).

Where the governor's consent to the acquisition of lands for use as migratory bird refuges was unconditional, he consented to purchase as authorized by this section [Code 1942, § 5928] (including acquisition by condemnation) not only of the land itself but also hunting and other rights in the land deemed necessary to the project; and the governor's disclaimer made nearly three years after his consent could not alter the legal effect of his original action. Swan Lake Hunting Club v. United States, 381 F.2d 238 (5th Cir. 1967).

The United States, after securing the governor's consent as required by this section [Code 1942, § 5928], had the power to proceed by eminent domain to acquire the hunting rights of a private club in lands intended as a migratory game bird refuge which would include certain public hunting areas. United States v. Hunting Rights of Swan Lake Hunting Club, 237 F. Supp. 290 (N.D. Miss. 1964).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 32.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

§ 49-5-31. Federal acts.

The federal conservation acts for the protection of game and fish and applicable regulations are hereby made a part of this chapter.

SOURCES: Codes, 1942, § 5909; Laws, 1932, ch. 123; Laws, 1998, ch. 345, § 1, eff from and after July 1, 1998.

Cross References — Issuance of permits for scientific purposes, see § 49-1-41.

ATTORNEY GENERAL OPINIONS

The justice court has jurisdiction over violations of the federal game and fish laws, which have been made a violation of state law by operation of statute. Goodman, Nov. 10, 2000, A.G. Op. #2000-0651.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 32.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

§ 49-5-33. Authority of United States Commissioner of fishieries.

The United States Commissioner of Fisheries and his duly authorized agents are hereby accorded the right to carry on fish-cultural activities and all operations connected therewith in any manner and at such times as may by such commissioner, or his agents, be considered necessary and proper.

SOURCES: Codes, 1942, § 5924; Laws, 1932, ch. 322.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, ; Conservation and Preservation of Wildlife § 32.

CJS. 36A C.J.S., Fish §§ 24-27.

§ 49-5-35. Biological survey.

The department is authorized to cooperate with the United States Bureau of Biological Survey in the taking, killing and destruction of predatory animals within the state that are destructive to game birds, animals and livestock. The department may pay its proportionate share of the salary and expenses of the designated representative of the Bureau of Biological Survey out of any funds to the credit of the Fisheries and Wildlife Fund for the purpose of carrying out this section.

SOURCES: Codes, 1942, § 5925; Laws, 1938, ch. 180; Laws, 1982, ch. 365, § 8; Laws, 2000, ch. 516, § 37, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Fisheries and wildlife fund, see § 49-5-21.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 32.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

§ 49-5-37. Appropriation to eradicate rabies among foxes.

The sum of Twenty-five Thousand Dollars ($25,000.00), or so much thereof as may be necessary is hereby appropriated out of any money in the treasury of the department, for the purpose of eradicating rabies among foxes in any county in the State of Mississippi, when the Board of Health or the commission determines that the disease is prevalent in any county or district.

SOURCES: Codes, 1942, § 5927.5; Laws, 1948, ch. 255, § 12; Laws, 2000, ch. 516, § 38, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "State Game and Fish Commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

§ 49-5-39. Fines and penalties.

(1) For every violation of Section 49-5-5 the person so offending shall be punished by a fine of not less than One Hundred Fifty Dollars ($150.00) or more than Three Hundred Dollars ($300.00), and by imprisonment in the county jail not less than ten (10) days or more than thirty (30) days. For every subsequent violation of Section 49-5-5, the person so offending shall be punished by a fine of not less than Three Hundred Dollars ($300.00) or more than Five Hundred Dollars ($500.00), and by imprisonment in the county jail not less than ten (10) days or more than thirty (30) days, which sentence shall be served and not suspended. No person convicted of violating the above section shall for two (2) years thereafter be allowed to hunt or receive license to hunt for birds or game in the county of his conviction and in the management area within which the refuge, sanctuary or preserve is located. No person convicted of any subsequent violation of the above section shall for two (2) years thereafter be allowed to hunt or receive a license to hunt for birds or game in the State of Mississippi.

(2) Any person trespassing on any game or fish refuge in any game or fish management area shall be guilty of a misdemeanor and punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) and imprisonment in the county jail of not more than thirty (30) days.

(3) Unless a different or other penalty or punishment is specially prescribed, a person who violates any of the provisions of this chapter or any law

or regulation for the protection of wild animals, birds or fish, or who fails to perform any duty imposed by such laws or regulations, or who violates or fails to comply with any lawful order, rule or regulation adopted by the commission is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, 1930, § 3881; 1942, §§ 5837, 5844-24, 5866; Laws, 1924, ch. 323; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1948, ch. 255, § 4; Laws, 1956, ch. 149, § 1; Laws, 1962, ch. 181, § 6, ch 187; Laws, 1971, ch. 313, § 1; Laws, 1977, ch. 470, eff from and after passage (approved April 13, 1977).

Cross References — Disposition of fines and penalties, see § 49-5-51.

Penalty for violating regulations for hunting with bow and arrow, see § 49-7-37.

Penalty for violating regulations for natural forest lands, see § 49-7-43.

Unlawful methods of taking fish, see § 49-7-81.

Penalties related to hunting and fishing, see § 49-7-103.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An admission of guilt made by a defendant spontaneously and before arresting game wardens had an opportunity to advise him of his constitutional rights was admissible against him when tried on the charge of possessing undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

Game wardens who had observed the defendant catch catfish smaller than the legal minimum by means of illegal traps in a public lake and subsequently transport them by boat to a point where he loaded them on a pickup truck were lawfully entitled to arrest the defendant and search his truck, and their evidence was admissible in court. Russell v. State, 220 So. 2d 334 (Miss. 1969).

The fact that a defendant who admitted that he was catching fish "trying to make a living" had not paid the commercial fisherman's privilege license required by Code 1942, § 5609 was no defense to a charge of possession of undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

ATTORNEY GENERAL OPINIONS

Upon conviction, violations of the federal game and fish laws should be fined as provided in the statute and state assessments should be imposed as for other misdemeanor violations. Goodman, Nov. 10, 2000, A.G. Op. #2000-0651.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 42 et seq.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-5-41. Statute of limitations.

Section 99-1-5, Mississippi Code of 1972, shall apply to all violations of the laws or regulations relating to wild animals, birds, or fish.

SOURCES: Codes, 1942, § 5865; Laws, 1932, ch. 123.

§ 49-5-43. Duties of sheriffs and other peace officers.

(1) Any violation or attempt to violate any of the provisions of this chapter, or any law or regulation for the protection of wild animals, birds or fish, shall constitute and is hereby declared a misdemeanor. All sheriffs, deputy sheriffs, constables and peace officers of this state are hereby made ex-officio special conservation officers and it shall be their duty to aid in the enforcement of such laws or regulations.

(2) It shall be the duty of the conservation officer, sheriff, constable and city, town and village officers within the county to arrest, with or without process, any person whom they may know or have good reason to believe is violating the provisions of Section 49-5-5 and shall take them before the proper justice of the peace or other officer to be dealt with according to law. Any private person may arrest any person violating the above section in his presence.

SOURCES: Codes, 1930, § 3884; 1942, §§ 5840, 5857; Laws, 1924, ch. 323; Laws, 1932, ch. 123; Laws, 1936, ch. 221; Laws, 1974, ch. 569, § 16, eff from and after passage (approved April 24, 1974).

Editor's Note — Chapter 471, Laws of 1981, as part of a continuing overall legislative design to replace justice of the peace courts with justice courts and justices of the peace with justice court judges, amended numerous sections of the Mississippi Code of 1972 affecting justices of the peace and justice of the peace courts. Although chapter 471 did not specifically amend this section, attention is directed to Miss. Const., Art. 6, § 171, amended 1975, which provides, inter alia, that "All reference in the Mississippi Code to justice of the peace shall mean justice court judge."

Cross References — Duties of sheriffs, see § 19-25-67.

Application of general penal laws to municipal offenses, see § 21-13-19.

Marshal or chief of police as constable within municipal boundaries, see § 21-21-1.

Appointment of conservation officers, see § 49-1-13.

Powers and duties of conservation officers to apprehend violators generally, see § 49-1-44.

Authority to make arrest at any time or place, see § 99-3-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 5857 involving the question whether a fishing license must be obtained by a nonresident for the privilege of fishing in a privately owned artificial lake stocked by the owner. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

RESEARCH REFERENCES

ALR. Validity of roadblocks by state or local officials for purpose of enforcing fish or game laws. 87 A.L.R.4th 981.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 42 et seq.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 15 et seq.

§ 49-5-45. Duties of district attorneys, county attorneys and circuit judges.

It shall be the duty of each district attorney in this state and county prosecuting attorney in each county to prosecute and defend, for the state, in all courts of the county or counties in his district or county, all causes, criminal or civil, arising under the provisions of this chapter, or any law or regulation for the protection of wild animals, birds or fish, in which the state may be a party or may be interested or concerned. Circuit judges shall give the grand juries, when organized, the provisions of the laws relating to wild animals, birds and fish strictly in charge and shall urge strict inquiry into all violations thereof.

SOURCES: Codes, 1942, § 5858; Laws, 1932, ch. 123.

Cross References — Charging the grand jury, see § 13-5-47.
Duties of county attorney, see § 19-23-11.
Powers and duties of district attorney, see § 25-31-11.
Setting fire to woods or fields, see § 49-7-75.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 47 et seq.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 19.

§ 49-5-47. Corporations; how prosecuted.

In case of a violation of this chapter or any law or regulation for the protection of wild animals, birds, fish by a corporation the warrant of arrest may be read to and a true copy delivered to the president, secretary, or manager in this state, or to any general or local agent thereof in the county where the action is pending, and, upon the return of such warrant so served, the corporation shall be deemed in court and subject to the jurisdiction thereof, and any fines imposed may be collected by the execution against the property of such corporation, but this section shall not be deemed to exempt any agent or employee from prosecution.

SOURCES: Codes, 1942, § 5859; Laws, 1932, ch. 123.

§ 49-5-49. Witnesses.

No person called upon to testify as a witness, by or under authority of any court, in any case brought under this chapter, or any law or regulation for the protection of wild animals, birds, or fish shall be excused or exempted from so testifying on the ground that the testimony sought might incriminate him or tend to incriminate him, whether he is called upon to give evidence or produce books, records and papers, but such person shall not thereafter be prosecuted for any offense concerning which he is so called upon to give such testimony or furnish such books, papers, or documents.

SOURCES: Codes, 1942, § 5861; Laws, 1932, ch. 123.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 55.

CJS. 36A C.J.S., Fish § 49.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 19.

Lawyers' Edition. Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination. 32 L. Ed. 2d 869.

§ 49-5-51. Disposition of fines.

All moneys collected as fines or penalties for violations of the provisions of this chapter, or any law or regulation for the protection of wild animals, birds, or fish shall be paid over by the court, justice court judge, or other office collecting or receiving the fines or penalties to the county having jurisdiction over the violations as provided by law.

SOURCES: Codes, 1930, § 3881; 1942, §§ 5837, 5863; Laws, 1924, ch. 323; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1958, ch. 177; Laws, 1974, ch. 569, § 17; Laws, 1982, ch. 365, § 7; Laws, 1994, ch. 372, § 1, eff from and after July 1, 1994.

Cross References — Fisheries and wildlife fund, see § 49-5-21.

Deposit of the difference in fee for lifetime and golden lifetime licenses into the wildlife endowment fund, see § 49-7-153.

RESEARCH REFERENCES

ALR. Adverse presumption or inference based on state's failure to produce or examine informant in criminal prosecution-modern cases. 80 A.L.R.4th 547.

POWERS AND DUTIES OF COMMISSION ON WILDLIFE, FISHERIES AND PARKS

SEC.
49-5-61. Transfer of powers and duties of Wildlife Heritage Committee.
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49-5-87. Commission to take title to certain lands in name of state.
49-5-88. Bond issuance authorized for purpose of acquiring aforementioned lands.
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49-5-90. Bonds; negotiability; exemption from taxation.
49-5-91. Bonds; sale; interest.
49-5-92. Bonds; wildlife heritage committee land purchase fund.
49-5-93. Bonds; rights of bondholders.
49-5-94. Bonds; validation.
49-5-95. Bonds; legal investments and securities.
49-5-96. Bonds; Sections 49-5-86 through 49-5-98 full and complete authority.
49-5-97. Bonds; withdrawals from land purchase fund; report of expenditures.
49-5-98. Bonds; duty of attorney general; costs.
49-5-99. Open access to and use of land managed by commission for recreational hunting; certain limitations; report of acreage managed by commission.

§ 49-5-61. Transfer of powers and duties of Wildlife Heritage Committee.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks shall be the Wildlife Heritage Committee and shall exercise the duties and authority granted to such committee pursuant to Sections 49-5-69 through 49-5-98, and pursuant to any other laws of the State of Mississippi.

(2) Wherever the term "Wildlife Heritage Committee" appears in the laws of the State of Mississippi, it shall be construed to mean the Mississippi Commission on Wildlife, Fisheries and Parks, unless the context clearly means to refer to the former Wildlife Heritage Committee.

SOURCES: Laws, 1974, ch. 335, § 1; Laws, 1984, ch. 488, § 314; Laws, 2000, ch. 516, § 39, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Affect of a member of any board, commission, council or authority changing domicile, see § 7-13-9.

Allocation from Gulf and Wildlife Protection Fund for management and protection of wildlife and wildlife habitats, see § 29-7-3.

Authorization for Commission on Wildlife, Fisheries and Parks to acquire interests in real and personal property in furtherance of purposes of §§ 49-5-61 through 49-5-85, see § 49-5-71.

Administration by the Wildlife Heritage Committee of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

Surface mining and reclamation of land, see §§ 53-7-1 et seq.

Requirement that committee assist in designation of land as being unsuitable for surface mining, see § 53-7-49.

JUDICIAL DECISIONS

1. In general.

Section 57-1-3, which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority [Mississippi Department of Information Technology Services], § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12 [Repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss. Const. Art. 1, § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1, 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State ex rel. Allain, 441 So. 2d 1329 (Miss. 1983).

§§ 49-5-63 through 49-5-67. Repealed.

Repealed by Laws of 1984, ch. 488, § 340, eff from and after July 1, 1984.

§ 49-5-63. [En Laws, 1974, ch. 335, § 2]
§ 49-5-65. [En Laws, 1974, ch. 335, § 2]
§ 49-5-67. [En Laws, 1974, ch. 335, § 2]

Editor's Note — Former Section 49-5-63 provided for meetings and election of officers for the Wildlife Heritage Committee.

Former Section 49-5-65 provided for compensation for members of the Wildlife Heritage Committee.

Former Section 49-5-67 set out the requirements for a quorum for transaction of business by the Wildlife Heritage Committee.

§ 49-5-69. Contracts and agreements.

The commission is hereby authorized to make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the committee under Sections 49-5-61 through 49-5-85, including contracts with any firm, person, corporation, governmental agency or other entity and each and any Mississippi governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the committee to facilitate the purpose of Sections 49-5-61 through 49-5-85.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 2000, ch. 516, § 40, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 341, ch. 488, Laws of 1984, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 49-5-86 provides that the words "committee" or "wildlife heritage committee" shall mean the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Administration of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29, 31, 40.

CJS. 36A C.J.S., Fish §§ 24-27.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 6.

98 C.J.S., Woods and Forests § 15.

§ 49-5-71. Acquisition and disposition of real and personal property; easements and rights-of-way.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks is hereby authorized to acquire interests in real estate and personal property through purchase, donation, bequest or devise in furtherance of the purposes of Sections 49-5-61 through 49-5-85 and otherwise in accordance with the provisions of law. The commission is authorized to approve land or real estate suitable for such purposes as eligible for the income tax credit authorized under Section 27-7-22.22.

(2) Before such real estate is purchased or leased, the fair market value of such real estate shall be determined by the averaging of at least two (2) appraisals by Mississippi Certified General Appraisers. Such appraisals shall be paid for by the State of Mississippi.

(3) The commission is hereby authorized to obtain abstracts and surveys, and to engage the services of attorneys to conduct the above described transactions. The commission is authorized to obtain title insurance on property purchased if, in the opinion of the commission, the best interests of the State of Mississippi would be served.

(4) In order to carry out its management responsibilities over all state lands which are now or may hereafter come under its jurisdiction, the Department of Wildlife, Fisheries and Parks is authorized to grant easements and rights-of-way over and across any part of such state lands. Such easements and rights-of-way may be granted for such consideration, and upon such terms and conditions, as the department may deem to be in the best interest of the state, consistent with the use of such lands for recreational purposes. Any easement for a utility line shall be granted for that period of time which the department deems to be in the best interest of the management of such lands.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 1979, ch. 434, § 1; Laws, 1984, ch. 488, § 315; Laws, 1987, ch. 519; Laws, 1992, ch. 313, § 1; Laws, 1993, ch. 519, § 1; Laws, 1994, ch. 366, § 1; Laws, 1998, ch. 479, § 1; Laws, 2010, ch. 503, § 3, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 2010, ch. 503, § 6, effective January 1, 2010, provides:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2010 amendment added the last sentence in (1).

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Wildlife Heritage Fund and administration of acquired properties, see § 49-5-77.

Application of this section to purchases of real estate from wildlife heritage fund, see § 49-5-78.

Agreements to provide camping and other recreational facilities on lands acquired under this section, see § 49-5-81.

Administration of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Lands §§ 33, 118-126.

CJS. 73B C.J.S., Public Lands § 20.

73B C.J.S., Public Lands §§ 303, 304.

98 C.J.S., Woods and Forests § 18.

§ 49-5-73. Employment of personnel.

The commission may employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the commission and to fix and pay their compensation from funds available to the commission.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 2000, ch. 516, § 41, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-75. Rules and regulations.

The commission may make such rules and regulations, inaugurate such studies and surveys and establish such programs as it may deem necessary to carry out the provisions and purposes of Sections 49-5-61 through 49-5-85.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 2000, ch. 516, § 42, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Administration of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29, 31, 40.

CJS. 36A C.J.S., Fish §§ 24-27.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

98 C.J.S., Woods and Forests § 10.

§ 49-5-76. Commission authorized to solicit and receive gifts on behalf of Mississippi Wildlife, Fisheries and Parks Foundation.

The Mississippi Commission on Wildlife, Fisheries and Parks may solicit and receive gifts, donations, contributions and other monies, including bequests and devises, on behalf of the Mississippi Wildlife, Fisheries and Parks Foundation and, upon receipt thereof, shall transfer and remit such gifts, donations, contributions and monies so received to the foundation for its use.

SOURCES: Laws, 2006, ch. 405, § 2, eff from and after passage (approved Mar. 15, 2006.)

Cross References — Contribution to Mississippi Wildlife, Fisheries and Parks Foundation from state income tax refund, see § 27-7-94.1.

§ 49-5-77. Wildlife Heritage Fund; gifts; administration of acquired property.

(1) The commission is hereby empowered and authorized to establish a fund to be known as the Wildlife Heritage Fund to be deposited in an approved state depository and expended by appropriation approved by the Legislature as provided by law. The interest obtained from any investment or deposit of monies in such fund shall be deposited by the commission into such fund.

(2) The commission is empowered and authorized, in addition to such sums as may be appropriated from time to time by the Legislature, to accept from any person, firm, corporation or agency of government, national, state or local any gifts or devise, lands, money for the purpose of acquiring by lease, or purchase any area for hunting or fishing use, outdoor recreation, or for the

preservation of any species of wildlife or fish. Such lands and waters as are acquired under the provisions of Sections 49-5-61 through 49-5-85 and Section 49-5-78 shall be under the administration and control of the commission until a proper plan shall be developed for the land or water. The commission shall enter into an agreement with an appropriate agency in the executive branch to develop a plan for the land or water. After the plan is developed, the land or water shall be transferred to the administration and control of the department or other appropriate agency in the executive branch to be managed by the agency according to the plan.

(3) The commission is authorized and empowered to accept and earmark for any purpose, not inconsistent with the provisions of Sections 49-5-61 through 49-5-85, any gift or devise, lands or money from any person, firm, corporation or governmental unit on such terms and conditions as the donor may designate.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 1979, ch. 434, § 2; Laws, 1982, ch. 435, § 2; Laws, 1984, ch. 488, § 316; Laws, 1985, ch. 330; Laws, 1989, ch. 398, § 1; Laws, 2000, ch. 516, § 43; Laws, 2003, ch. 404, § 1, eff from and after passage (approved Mar. 14, 2003.)

Editor's Note — Section 341, ch. 488, Laws of 1984, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Provisions for designation of contribution to Wildlife Heritage Fund on income tax return, see § 27-7-91.

Provisions for transfer to the Wildlife Heritage Fund of contributions designated on tax returns, and expenditure of such amounts, see § 27-7-93.

Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Additional hunting and fishing fee for wildlife heritage fund and administration of real estate purchased from fund, see § 49-5-78.

Administration of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

RESEARCH REFERENCES

ALR. Capacity to sue: standing of private citizen, association, or organization to maintain action in federal court for injunctive relief against commercial development or activities, or construction of highways, or other governmental projects, alleged to be harmful to environment in public parks, other similar recreational areas, or wildlife refuges. 11 A.L.R. Fed. 556.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29, 31, 40.

CJS. 36A C.J.S., Fish §§ 24-27.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 6.

98 C.J.S., Woods and Forests §§ 9, 14.

§ 49-5-78. Additional hunting and fishing fee for Wildlife Heritage Fund; purchase of hunting and fishing areas.

Included in the hunting and fishing license fees authorized in Section 49-7-8, there shall be collected for each nonresident license and renewal thereof, except nonresident temporary fishing permits, a fee of Five Dollars ($5.00), which shall be paid into the Wildlife Heritage Fund established under the provisions of subsection (1) of Section 49-5-77. The funds generated from such additional fees shall be used from time to time by the commission to purchase, and take title in the name of the State of Mississippi, real estate to be used as hunting and/or fishing areas by the people of the State of Mississippi. In purchasing this real estate, the commission shall have all of the powers, and shall be subject to all of the restrictions prescribed in Sections 29-1-1 and 49-5-71. Transfer of title to any real estate purchased under this section shall be by warranty deed or deeds vesting title in fee simple, excepting mineral rights where necessary, in the name of the State of Mississippi. Any real estate purchased under this section shall be subject to the provisions of subsection (2) of Section 49-5-77 regarding the development of plans for and the management of real estate which is acquired by the department.

SOURCES: Laws, 1982, ch. 435, § 1; Laws, 1993, ch. 463, § 5; Laws, 1993, ch. 615, § 5; Laws, 2000, ch. 516, § 44, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Wildlife Heritage Fund and administration of acquired properties, see § 49-5-77.

§ 49-5-79. Repealed.

Repealed by Laws of 1984, ch. 488, § 340, eff from and after July 1, 1984. [En Laws, 1974, ch. 335, § 2]

Editor's Note — Former § 49-5-79 authorized the Wildlife Heritage Committee to utilize personnel of the Mississippi Game and Fish Commission.

§ 49-5-81. Camping and recreational facilities.

The commission may enter into agreements with the department for the purpose of providing camping and other recreational facilities on any such land acquired under Section 49-5-71.

SOURCES: Laws, 1974, ch. 335, § 2; Laws, 1979, ch. 434, § 3; Laws, 2000, ch. 516, § 45, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-83. Expenditures and audit of funds.

Monies expended from the Wildlife Heritage Fund shall be spent only after proper resolution entered upon its minutes by the commission and upon warrants signed by the chairman of the commission and countersigned by the executive director of the department. Such funds shall be audited at any time the Governor shall so direct or by the State Auditor on an annual basis.

SOURCES: Laws, 1974, ch. 335, § 3; Laws, 2000, ch. 516, § 46, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-85. Sections cumulative.

The provisions of Sections 49-5-61 to 49-5-85 are cumulative, and no existing provision of law is hereby repealed.

SOURCES: Laws, 1974, ch. 335, § 4, eff from and after passage (approved March 11, 1974).

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-86. Definitions.

For purposes of Sections 49-5-86 through 49-5-98, the following words and terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "General obligation bonds" means bonds of the State of Mississippi, to the repayment of which, both as to principal and interest, the full faith, credit and taxing power of the State of Mississippi are irrevocably pledged until the principal and interest are paid in full.

(b) "Bond commission" means the State Bond Commission.

(c) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(d) "Committee" or "Wildlife Heritage Committee" means the Mississippi Commission on Wildlife, Fisheries and Parks.

SOURCES: Laws, 1975, ch. 471, § 1; Laws, 1976, ch. 417, § 1; Laws, 1984, ch. 488, § 317; Laws, 2000, ch. 516, § 47, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-87. Commission to take title to certain lands in name of state.

(1) The commission shall have the power and is hereby authorized to purchase and take title in the name of the State of Mississippi, the following described land under the terms and conditions hereinafter provided, to wit:

Land presently owned by the Pascagoula Hardwood Company totaling some thirty-one thousand nine hundred sixteen (31,916) acres, more or less, situated as follows:

(a) Seventeen thousand two hundred seventy-eight (17,278) acres, more or less, in George County, Mississippi; and

(b) Fourteen thousand six hundred twenty-eight (14,628) acres, more or less, in Jackson County, Mississippi.

(2) The purchase price of such land shall not exceed its fair market value of Sixteen Million Five Hundred Thousand Dollars ($16,500,000.00) as of December 1, 1975, as determined by three (3) appraisals made by appraisers selected by the commission.

(3) Transfer of title to such property shall be by warranty deed or deeds vesting title in fee simple, excepting mineral rights where necessary, in the name of the State of Mississippi.

(4) The commission is hereby authorized and empowered to exercise on the lands described in subsection (1) of this section the same rights, powers and privileges as authorized and empowered under the provisions of "The Nongame and Endangered Species Conservation Act," being Sections 49-5-101 through 49-5-119.

(5) Individual leaseholders of the lands described in subsection (1) of this section, shall not be dispossessed of such lands prior to April 15, 1978, unless found to be in violation of the law and/or land management principles of Sections 49-5-101 through 49-5-119, or any other law, rule or regulation relating to the management of the lands.

SOURCES: Laws, 1975, ch. 471, § 2; Laws, 1976, ch. 417, § 2; Laws, 1977, ch. 472; Laws, 2000, ch. 516, § 48, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

Ability to lease lands acquired under this section, see § 49-5-71.

Authorization for Commission on Wildlife, Fisheries and Parks to lease campsites on property acquired pursuant to this section, see § 49-5-71.

Administration of procedures for the registration and dedication of natural areas within state, see §§ 49-5-141 et seq.

§ 49-5-88. Bond issuance authorized for purpose of acquiring aforementioned lands.

The commission shall have power and is hereby authorized, at one time or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds to be used exclusively and only for the purpose of acquiring all or any part of the land described in Section 49-5-87, but in no event shall the amount of bonds issued exceed a total of Thirteen Million Five Hundred Thousand Dollars ($13,500,000.00).

The State Bond Commission shall not direct the issuance of bonds under the provisions of Sections 49-5-86 through 49-5-98 when appropriations by the Legislature and bonds issued, or requested to be issued, would exceed an aggregate total in excess of Thirteen Million Five Hundred Thousand Dollars ($13,500,000.00).

SOURCES: Laws, 1975, ch. 471, § 3; Laws, 1976, ch. 417, § 3; Laws, 2000, ch. 516, § 49, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-89. Bonds; authority of state bond commission; payment; maturities and signatures.

Upon the adoption of a resolution by the commission declaring the necessity for issuance of any part or all of the general obligation bonds authorized by Sections 49-5-86 through 49-5-98 and set forth in Section 49-5-88, the commission shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission shall, in its discretion, act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. For the payment of said bonds and the interest thereon, the full faith, credit and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature shall find that there are funds available in the General Fund of the Treasury of the State of Mississippi in amounts sufficient to pay maturing principal and accruing interest of said general obligation bonds, and if the Legislature shall appropriate such available funds for the purpose of paying such maturing principal and accruing interest, then the maturing principal and accruing interest of said bonds shall be paid from appropriations made from the General Fund of the Treasury of the State of Mississippi by the Legislature thereof; but if there are not available sufficient funds in the General Fund of the Treasury of the State of Mississippi to pay the maturing principal and accruing interest of said bonds, or if such funds are available and the Legislature should fail to appropriate a sufficient amount thereof to pay such principal and accruing interest as the same becomes due, then and in that event there shall annually be levied upon all taxable property within the State of Mississippi an ad valorem tax at a rate sufficient to provide the funds required to pay the said bonds at maturity and the interest thereon as the same accrues.

Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission. Provided, however, that such bonds shall mature in annual installments beginning not more than two (2) years from date thereof and extending not more than twenty (20) years from date thereof. Such bonds shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds, who were in the office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser, or had been in office on the date such bonds may bear.

SOURCES: Laws, 1975, ch. 471, § 4; Laws, 1976, ch. 417, § 4; Laws, 2000, ch. 516, § 50, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Negotiable instruments under the Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 49-5-90. Bonds; negotiability; exemption from taxation.

All general obligation bonds of the State of Mississippi and interest coupons issued under the provisions of Sections 49-5-86 through 49-5-98 shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and the income therefrom shall be exempt from all taxation within the State of Mississippi.

SOURCES: Laws, 1975, ch. 471, § 5; Laws, 1976, ch. 417, § 5, eff from and after passage (approved May 2, 1976).

Cross References — Negotiable instruments under the Mississippi Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 49-5-91. Bonds; sale; interest.

The State Bond Commission shall sell such bonds on sealed bids at public sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. The bonds authorized by Sections 49-5-86 through 49-5-98 shall not bear a greater overall maximum interest rate to maturity than seven percent (7%) per annum. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) maturity shall not exceed seven percent (7%).

Each interest rate specified in any bid must be in a multiple of one-eighth of one percent (⅛ of 1%) or one-tenth of one percent (⅒ of 1%), and a zero rate of interest cannot be named.

Notice of the sale of any such bonds shall be published at least two (2) times, the first of which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one (1) or more newspapers having a general circulation in the City of Jackson and in one (1) or more other newspapers or financial journals with a large national circulation, to be selected by the state bond commission.

The State Bond Commission, when issuing any bonds under the authority of Sections 49-5-86 through 49-5-98, shall provide that bonds maturing eleven (11) or more years after the date of the issuance of such bonds may, at the option of the State of Mississippi, be called in for payment and redemption in reverse numerical order at the call price named therein and accrued interest, or on the tenth anniversary of the date of issue, or on any interest payment date thereafter prior to maturity.

SOURCES: Laws, 1975, ch. 471, § 6; Laws, 1976, ch. 417, § 6, eff from and after passage (approved May 2, 1976).

§ 49-5-92. Bonds; wildlife heritage committee land purchase fund.

Upon the issuance and sale of such bonds, the State Bond Commission shall transfer the proceeds of any such sale or sales to a special fund in the state treasury to be known as the "wildlife heritage committee land purchase fund." The proceeds of such bonds shall be used solely for the payment of the cost of the land described in Section 49-5-87, which shall include costs incident to the issuance and sale of such bonds, and shall be disbursed solely upon the order of the committee under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

SOURCES: Laws, 1975, ch. 471, § 7; Laws, 1976, ch. 417, § 7, eff from and after passage (approved May 2, 1976).

Editor's Note — Section 49-5-61 provides that wherever the term "Wildlife Heritage Committee" appears in the laws of the state of Mississippi it shall be construed to mean the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Exercise, by the Mississippi Commission on Wildlife, Fisheries and Parks, of the duties and authority granted to the Wildlife Heritage Committee, see § 49-5-61.

§ 49-5-93. Bonds; rights of bondholders.

Any holder of bonds issued under the provisions of Sections 49-5-86 through 49-5-98 or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted hereunder or under such resolution, and may enforce and compel performance of all duties required by Sections 49-5-86 through 49-5-98 to be performed, in order to provide for the payment of bonds and interest thereon.

SOURCES: Laws, 1975, ch. 471, § 8; Laws, 1976, ch. 417, § 8, eff from and after passage (approved May 2, 1976).

§ 49-5-94. Bonds; validation.

Such general obligation bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified or required by Sections 49-5-86 through 49-5-98. Any resolution providing for the issuance of general obligation bonds under the provisions of Sections 49-5-86 through 49-5-98 shall become effective immediately upon its adoption by the State Bond Commission, and any such resolution may be adopted at any regular, special or adjourned meeting of the State Bond Commission by a majority of its members.

The bonds authorized under the authority of Sections 49-5-86 through 49-5-98 shall be validated in the chancery court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district, and other bonds. The necessary papers for such validation proceedings shall be transmitted to the state bond attorney by the secretary of the state bond commission, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi.

SOURCES: Laws, 1975, ch. 471, § 9; Laws, 1976, ch. 417, § 9, eff from and after passage (approved May 2, 1976).

§ 49-5-95. Bonds; legal investments and securities.

All bonds issued under the provisions of Sections 49-5-86 through 49-5-98 shall be legal investments for trustees and other fiduciaries and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

SOURCES: Laws, 1975, ch. 471, § 10; Laws, 1976, ch. 417, § 10, eff from and after passage (approved May 2, 1976).

Cross References — State depositories, see §§ 27-105-1 et seq.
Depositories for funds of local governments, see §§ 27-105-301 et seq.
Investments by domestic insurance companies, see § 83-19-51.
Fiduciary investments, see §§ 91-13-1 et seq.

§ 49-5-96. Bonds; Sections 49-5-86 through 49-5-98 full and complete authority.

Sections 49-5-86 through 49-5-98 shall be deemed to be full and complete authority for the exercise of the powers herein granted, but said sections shall not be deemed to repeal or to be in derogation of any existing law of this state whereunder projects of the character herein defined may be constructed or financed.

SOURCES: Laws, 1975, ch. 471, § 11; Laws, 1976, ch. 417, § 11, eff from and after passage (approved May 2, 1976).

§ 49-5-97. Bonds; withdrawals from land purchase fund; report of expenditures.

The funds which are transferred from the sale of bonds under Sections 49-5-86 through 49-5-98 to the special fund in the State Treasury known as the "Wildlife Heritage Committee Land Purchase Fund" may be withdrawn only in the following manner: The funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, which warrants shall be issued upon requisition by the chairman of the commission pursuant to a resolution adopted by the commission authorizing the requisition.

All expenditures ordered by the commission shall be entered upon its minutes, and the commission shall submit a full report of its work and all the transactions carried on by it and a complete statement of all its expenditures at the next regular session of the Legislature.

SOURCES: Laws, 1975, ch. 471, § 12; Laws, 1976, ch. 417, § 12; Laws, 2000, ch. 516, § 51, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-5-86 provides that the words "committee" or "wildlife heritage committee" shall mean the Mississippi Commission on Wildlife, Fisheries and Parks.

§ 49-5-98. Bonds; duty of attorney general; costs.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the commission in issuing, selling and validating bonds herein provided for, and the commission may expend any sum not exceeding Fifteen Thousand Dollars ($15,000.00) from the proceeds derived from the sale of the bonds authorized hereunder to pay the cost of attorney's fees, validating, printing, and cost of delivery of bonds authorized under Sections 49-5-86 through 49-5-98.

SOURCES: Laws, 1975, ch. 471, § 13; Laws, 1976, ch. 417, § 13; Laws, 2000, ch. 516, § 52; Laws, 2012, ch. 546, § 21, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning.

§ 49-5-99. Open access to and use of land managed by commission for recreational hunting; certain limitations; report of acreage managed by commission.

(1) Subject to existing rights, lands managed by the Commission on Wildlife, Fisheries and Parks shall be open to access and use for recreational hunting except as limited by the commission for reasons of public safety, homeland security, or as otherwise limited by law.

(2) The commission shall exercise its authority to manage lands in a manner to support, promote and enhance recreational hunting opportunities to the extent authorized by law.

(3) The commission is not required to give preference to hunting over other uses or priorities established by state law.

(4) To the greatest practicable extent, commission land management decisions and actions may not result in any net loss of any acreage available for hunting opportunities that exists on July 1, 2006.

(5) Before January 1 of each year, the commission shall submit to the chairmen of the respective wildlife committees in each house a written report containing:

(a) The acreage managed by the commission that has been closed to recreational hunting during the previous year and the reasons for the closures; and

(b) The acreage managed by the commission that was opened to recreational hunting to compensate for the acreage that was closed during the previous year.

SOURCES: Laws, 2006, ch. 549, § 1, eff from and after July 1, 2006.

NONGAME AND ENDANGERED SPECIES CONSERVATION

Sec.
49-5-101. Title.
49-5-103. Legislative findings and declaration.
49-5-105. Definitions.
49-5-107. Designation and protection of nongame wildlife in need of management.
49-5-109. Designation and protection of endangered species.
49-5-111. Programs; permission to remove, capture or destroy endangered species.
49-5-113. Regulations.
49-5-115. Enforcement; penalties.
49-5-117. Construction.
49-5-119. Funding of programs.

§ 49-5-101. Title.

Sections 49-5-101 through 49-5-119 shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

SOURCES: Laws, 1974, ch. 512, § 2, eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 49-5-103. Legislative findings and declaration.

The Legislature finds and declares all of the following:

(a) That it is the policy of the Mississippi Department of Wildlife, Fisheries and Parks to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as members of ecosystems;

(b) That species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be accorded protection in order to maintain and to the extent possible enhance their numbers;

(c) That the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife listed on the United States' Lists of Endangered Fish and Wildlife as set forth herein unless such actions will assist in preserving or propagating the species or subspecies; and

(d) That funding may be made available to the department annually by appropriations from the General Fund or from other sources separate and apart from the Fisheries and Wildlife Fund for management of nongame and endangered species.

SOURCES: Laws, 1974, ch. 512, § 1; Laws, 1982, ch. 365, § 9; Laws, 2000, ch. 516, § 53, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Fisheries and wildlife fund, see § 49-5-21.

Federal Aspects — United States' List of Endangered Native Fish and Wildlife, see Part 17 of Title 50 of the Code of Federal Regulations, Appendix D.

United States' List of Endangered Foreign Fish and Wildlife, see Part 17 of Title 50 of the Code of Federal Regulations, Appendix A.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

§ 49-5-105. Definitions.

The words and phrases when used in Sections 49-5-101 through 49-5-119 shall, for the purposes of such sections, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Director" means the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(d) "Endangered species" means any species or subspecies of wildlife whose prospects of survival or recruitment within the state are in jeopardy or are likely within the foreseeable future to become so, due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment of its habitat, or (2) its over-utilization for scientific, commercial or sporting purposes, or (3) the effect on it of disease, pollution, or predation, or (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or (5) any combination of the foregoing factors. The term shall also be deemed to include any species or subspecies of fish and wildlife appearing on the United States' List of Endangered Native Fish and Wildlife as it appears on July 1, 1974, (Part 17 of Title 50 of the Code of Federal Regulations, Appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50 of the Code of Federal Regulations, Appendix A), as such list may be modified hereafter.

(e) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also, included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(f) "Nongame species" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state.

(g) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(h) "Person" means any individual, firm, corporation, association or partnership.

(i) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(j) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

SOURCES: Laws, 1974, ch. 512, § 3; Laws, 2000, ch. 516, § 54, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-107. Designation and protection of nongame wildlife in need of management.

(a) The commission shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the commission shall issue proposed regulations and develop management programs, designed to insure the continued ability of nongame wildlife to perpetuate themselves successfully. Such proposed regulations shall set forth species or subspecies of nongame wildlife which the commission deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The commission shall conduct ongoing investigations of nongame wildlife and may from time to time amend such regulations by adding or deleting species or subspecies of nongame wildlife.

(b) The commission shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, purchasing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. Such regulation shall become effective sixty (60) days after being proposed during which period public comment shall be solicited and received. The commission may hold a public hearing if deemed appropriate. On the basis of public comments received or the testimony at any such hearing the commission may make such changes in the proposed regulation as are consistent with effective management of nongame wildlife.

(c) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, process, purchase, sell or offer for sale or ship nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

SOURCES: Laws, 1974, ch. 512, § 4; Laws, 2006, ch. 479, § 1, eff from and after passage (approved Mar. 27, 2006.)

Cross References — Violations of provisions of subsection (c) of this section or regulations issued under this section are Class I violations punishable as provided in § 49-7-141, see § 49-5-115.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

Construction and application of Marine Mammal Protection Act of 1972 (16 USCS §§ 1361 et seq.) and administrative regulations promulgated thereunder. 43 A.L.R. Fed. 599.

§ 49-5-109. Designation and protection of endangered species.

(a) On the basis of investigations on nongame wildlife provided for in Section 49-5-107 and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after July 1, 1974 the commission shall by regulation propose a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies. Such regulation shall become effective sixty (60) days after being proposed during which period public comment shall be solicited and received. The commission may hold a public hearing if deemed appropriate. On the basis of public comments received or the testimony at any such hearing, the commission may add to such proposed list additional species or subspecies which are determined to be endangered within the state or delete therefrom such species or subspecies which are determined not to be endangered within the state.

(b) The commission shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and may amend the list by such additions or deletions as are deemed appropriate. The commission shall submit to the Governor a summary report of the data used in support of all amendments to the state list during the preceding biennium.

(c) Except as otherwise provided in Sections 49-5-101 through 49-5-119, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists: (1) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (a); (2) the United States' List of Endangered Native Fish and Wildlife as it appears on July 1, 1974 (Part 17 of Title 50, Code of Federal Regulations, Appendix D); and (3) the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50, Code of Federal Regulations, Appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(d) In the event the United States' List of Endangered Native Fish and Wildlife is modified subsequent to July 1, 1974, by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (c) if, after the type of scientific determination described in subsection (a), the commission by regulation accepts such modification for the state. Any such regulation shall be effective upon promulgation.

SOURCES: Laws, 1974, ch. 512, § 5, eff from and after July 1, 1974.

Cross References — Violations of provisions of subsection (c) of this section or regulations issued under this section are Class I violations punishable as provided in § 49-7-141, see § 49-5-115.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

§ 49-5-111. Programs; permission to remove, capture or destroy endangered species.

(a) The commission shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The commission shall utilize all authority vested in the commission to carry out the purpose of this section.

(b) In carrying out programs authorized by this section, the commission may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(c) The Governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The Governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(d) The commission may permit, under such terms and conditions as may be prescribed by regulation, the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' List of Endangered Native Fish and Wildlife, as amended and accepted in accordance with subsection (d) of Section 49-5-109, or on the United States' List of Endangered Foreign Fish and Wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(e) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the commission and, where possible, by or under the supervision of an agent of the commission; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the commission pursuant to subsection (a) of Section 49-5-107.

SOURCES: Laws, 1974, ch. 512, § 6, eff from and after July 1, 1974.

Cross References — Failure to procure, or violation of terms of, a permit issued under subsections (d) and (e) of this section is a Class I violation punishable as provided in § 49-7-141, see § 49-5-115.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-5-113. Regulations.

The commission shall issue such regulations as are necessary to carry out the purposes of Sections 49-5-101 through 49-5-119.

SOURCES: Laws, 1974, ch. 512, § 7, eff from and after July 1, 1974.

§ 49-5-115. Enforcement; penalties.

(a) Any person who violates the provisions of subsection (c) of Section 49-5-107, or any regulations issued under Section 49-5-107 or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a Class I violation and punished as provided in Section 49-7-141.

(b) Any person who violates the provisions of subsection (c) of Section 49-5-109, or any regulations issued pursuant thereto or whoever fails to procure or violates the terms of any permit issued under subsections (d) and (e) of Section 49-5-111 is guilty of a Class I violation and is punishable as provided under Section 49-7-141.

(c) All law enforcement and management officers of the commission and other law enforcement officers authorized to enforce the laws of the State of Mississippi are authorized to carry out the provisions of Sections 49-5-101 through 49-5-119. Any officer or agent may, without warrant, arrest any person who the officer or agent has probable cause to believe is violating, in his presence or view, any section, regulation or permit provided for by Sections 49-5-101 through 49-5-119. An officer or agent who has made an arrest of a person for any such violation may search the person or business records at the time of arrest and seize any wildlife, records, or property taken, or used in connection with the violation.

(d) Equipment, merchandise, wildlife, or records seized under subsection (c) of this section shall be held by an officer or agent of the commission pending disposition of court proceedings, and may be forfeited to the state for destruction or disposition as the commission may deem appropriate. Prior to forfeiture, the commission may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping, costs thereof to be assessable to the defendant. The commission is authorized to issue regulations to implement this subsection.

SOURCES: Laws, 1974, ch. 512, § 8; Laws, 1998, ch. 370, § 1; Laws, 2002, ch. 514, § 1, eff from and after July 1, 2002.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

ALR. Forfeiture of property for unlawful use in violation of game laws, before trial of individual offender. 3 A.L.R.2d 738.

Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation. 81 A.L.R.2d 1093.

Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 15 et seq.

§ 49-5-117. Construction.

(a) None of the provisions of Sections 49-5-101 through 49-5-119 shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of wildlife on the United States' List of Endangered Native Fish and Wildlife, as amended and accepted in accordance with subsection (d) of Section 49-5-109, except as permitted in the proviso by subsection (c) of Section 49-5-109 and subsection (d) of Section 49-5-111.

(b) If any provision of Sections 49-5-101 through 49-5-119 or the application thereof to any person or circumstance is held invalid, the remainder of such sections, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SOURCES: Laws, 1974, ch. 512, § 9, eff from and after July 1, 1974.

Federal Aspects — United States' List of Endangered Native Fish and Wildlife, see Part 17 of Title 50 of the Code of Federal Regulations, Appendix D.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-5-119. Funding of programs.

The cost of programs established under Sections 49-5-101 through 49-5-119 shall be borne by any funds or property donated or granted for such purposes by any firm, person, corporation or agency of the U.S. Government and/or from such funds as may be appropriated from time to time by the Legislature; provided, further, that such funds as may be donated or granted by any firm, person, corporation or agency of the U.S. Government shall be placed in a separate fund to be known as "the endangered species protection fund" and such funds may be spent by the commission in its discretion as they become available in carrying out the provisions of Sections 49-5-101 through 49-5-119.

Provided, further, the commission may in its discretion have printed, issue and sell singly or in blocks of five annual editions of not more than five thousand (5,000) endangered species stamps for sale and voluntary purchase as a contribution at Five Dollars ($5.00) each; and funds so derived, less printing costs, shall be deposited in the endangered species fund.

SOURCES: Laws, 1974, ch. 512, § 10, eff from and after July 1, 1974.

MISSISSIPPI NATURAL HERITAGE

SEC.
49-5-141. Short title.
49-5-143. Legislative findings and declaration.
49-5-145. Purpose.
49-5-147. Definitions.
49-5-149. Powers and duties of commission.
49-5-151. Register of natural areas.
49-5-153. Registration of natural areas.
49-5-155. Dedication of natural areas to commission; exemption from ad valorem taxation.
49-5-157. Management, protection and inspection of natural area preserves.

§ 49-5-141. Short title.

Sections 49-5-141 through 49-5-157 shall be known and may be cited as the "Mississippi Natural Heritage Law of 1978."

SOURCES: Laws, 1978, ch. 415, § 1, eff from and after passage (approved March 23, 1978).

Cross References — Provision that contributions to the Wildlife Heritage Fund which have been made by designation on tax returns must be expended to implement the Mississippi Natural Heritage Law of 1978 (§§ 49-5-141 through 49-5-157), see § 27-7-93.

§ 49-5-143. Legislative findings and declaration.

(1) The Legislature finds and declares that there is a need for additional organized, accessible information to identify and make known the types and locations of plant and animal life, geological areas and other natural areas in this state.

(2) The Legislature further finds and declares that a system of protection and management of these areas should be implemented and maintained through a procedure of voluntary action by the owners of the property on which these areas may be located.

SOURCES: Laws, 1978, ch. 415, § 2, eff from and after passage (approved March 23, 1978).

§ 49-5-145. Purpose.

(1) The Legislature states that the purpose of Sections 49-5-141 through 49-5-157 is to establish a registration procedure by which owners of natural areas may voluntarily agree to manage and protect the areas according to rules set forth by the Mississippi Commission on Wildlife, Fisheries and Parks.

(2) The Legislature states that the purpose of Sections 49-5-141 through 49-5-157 is also to establish a dedication procedure by which owners of natural areas may voluntarily agree to convey any or all of their right, title and interest in the property to the State of Mississippi to be managed and protected

by an appropriate agency designated by the Mississippi Commission on Wildlife, Fisheries and Parks for the people of Mississippi.

SOURCES: Laws, 1978, ch. 415, § 3; Laws, 1984, ch. 488, § 318; Laws, 2000, ch. 516, § 55, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 49-5-147. Definitions.

For the purposes of Sections 49-5-141 through 49-5-157, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Committee" or "Wildlife Heritage Committee" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(c) "Dedicate" means the transfer to the Mississippi Commission on Wildlife, Fisheries and Parks of any estate, interest or right in any natural area to be held for the people of Mississippi in a manner provided in Section 49-5-155.

(d) "Natural area" means an area of land, water or air, or combination thereof, which contains an element of the state's natural diversity, including, but not limited to, individual plant or animal life, natural geological areas, habitats of endangered or threatened species, ecosystems or any other area of unique ecological, scientific or educational interest.

(e) "Natural area preserve" means a natural area which is voluntarily dedicated.

(f) "Register" means the act of agreement between the owner of a natural area and the Mississippi Commission on Wildlife, Fisheries and Parks for designation of the natural area and for its placement on the register of natural areas by voluntary agreement between the owner of the natural area and the commission.

(g) "Register of natural areas" means a listing of natural areas which are being managed by the owner of the natural area according to the rules and regulations of the Mississippi Commission on Wildlife, Fisheries and Parks.

SOURCES: Laws, 1978, ch. 415, § 4; Laws, 1984, ch. 488, § 319; Laws, 2000, ch. 516, § 56, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 49-5-149. Powers and duties of commission.

The commission shall have the following powers and duties:

(a) To utilize inventory data compiled by the Mississippi Wildlife Heritage Program concerning the natural areas of the state;

(b) To accept on behalf of the people of Mississippi any right, title or interest to any natural area;

(c) To establish and maintain a register of natural areas;

(d) To select natural areas for placement on the register of natural areas or for dedication as a natural area preserve, or both;

(e) To provide for the management of natural area preserves by designating an appropriate agency to manage the preserve in accordance with the provisions set forth in the articles of dedication which establish the natural area as a natural area preserve;

(f) To cooperate with any agency of the United States, the State of Mississippi and any other state, any political subdivision of this state and with private persons or organizations to implement the provisions of Sections 49-5-141 through 49-5-157;

(g) To discharge any other duty or action necessary to implement the provisions of Sections 49-5-141 through 49-5-157.

SOURCES: Laws, 1978, ch. 415, § 5; Laws, 2000, ch. 516, § 57, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-151. Register of natural areas.

The commission shall publish and revise at least annually a register of natural areas using the inventory of natural areas compiled by the Mississippi Wildlife Heritage Program.

SOURCES: Laws, 1978, ch. 415, § 6; Laws, 2000, ch. 516, § 58, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-153. Registration of natural areas.

(1) The owner of any natural area on the registry may, if the commission so agrees, register the natural area by executing a voluntary agreement with the commission for the owner to manage and protect the natural area according to the rules and regulations promulgated by the commission and to give the commission first option to purchase the natural area. If the owner agrees to register the area, he shall be given a certificate of registration and shall be committed to manage the area according to the terms of the agreement with the commission. The agreement may be terminated by either party after thirty (30) days written notice. The owner, upon termination, shall surrender the certificate; provided, however, the first option to purchase shall remain with the commission unless the commission shall relinquish the option in writing.

(2) Any property acquired by the commission or any other agency of the state or political subdivision thereof pursuant to any other authority in law may be registered according to this section.

SOURCES: Laws, 1978, ch. 415, § 7; Laws, 2000, ch. 516, § 59, eff from and after passage (approved Apr. 30, 2000.)

§ 49-5-155. Dedication of natural areas to commission; exemption from ad valorem taxation.

(1) The owner of any natural area may dedicate that area as a natural area preserve by executing with the commission articles of dedication. The articles shall transfer such portion of the owner's estate as agreed upon by the owner and the commission to the commission for the people of Mississippi.

(2) The commission may acquire articles of dedication for consideration or by donation, devise or bequest. The articles of dedication shall be recorded in the office of the chancery clerk of the county in which any or all of the natural area is located before the area shall become a natural area preserve.

(3) The commission may dedicate any property owned by the commission as natural area preserve by filing and recording articles of dedication in the office of the chancery clerk of the county in which any or all of the area is located.

(4) The articles of dedication shall contain:

(a) Provisions for the management, custody and use of the natural area preserve;

(b) Provisions which define the rights and privileges of the owner and the commission or the managing agency, including any rights of the owner related to his eligibility for an income tax credit authorized under Section 27-7-22.22; and

(c) Such other provisions as the owner or commission shall deem necessary to discharge the provisions of Sections 49-5-141 through 49-5-157 or to complete the transfer.

(5) The commission shall agree to no articles of dedication which do not provide for the protection, preservation and management of the natural area in a manner consistent with the intent and purposes of Sections 49-5-141 through 49-5-157.

(6) Any interest in real property owned by the commission in a natural area preserve shall be exempt from all ad valorem taxation levied by the State of Mississippi or any county or municipality or other political subdivision of this state. Any person who shall convey any interest in real property to the commission for the purposes set forth in Sections 49-5-141 through 49-5-157 shall be entitled to have the assessment of such property reduced by the amount of the value of the interest conveyed to the commission. The authorities responsible for determining and making the assessment shall also determine the value of the interest conveyed to the commission. This reduction in the assessment of such property shall terminate when the interest conveyed to the commission terminates.

(7) The commission shall be the agency of the State of Mississippi primarily responsible for acquisition of natural area preserves, but no provision of Sections 49-5-141 through 49-5-157 shall be construed to limit the commission's authority to acquire other property. Any property acquired by the commission or any other agency of the state or political subdivision thereof pursuant to any other authority in law may be dedicated according to this section.

(8) No provisions of Sections 49-5-141 through 49-5-157 shall be construed to limit the authority of any other agency to acquire and dedicate natural areas according to the provisions of Sections 49-5-141 through 49-5-157.

SOURCES: Laws, 1978, ch. 415, § 8; Laws, 2000, ch. 516, § 60; Laws, 2010, ch. 503, § 4, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2010, ch. 503, § 6, effective January 1, 2010, provides:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2010 amendment, in (4)(b), substituted "commission" for "committee" and added "including any rights of the owner related to his eligibility for an income tax credit authorized under Section 27-7-22.22."

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Dedication §§ 86:11 et seq. (instruments of dedication).

§ 49-5-157. Management, protection and inspection of natural area preserves.

(1) A natural area preserve is held in trust by the State of Mississippi for present and future generations and shall be managed and protected according to the rules and regulations set forth by the commission. A natural area preserve is hereby declared to be at the highest, best and most important use for the public.

(2) The commission shall inspect or provide for the inspection of at least annually, each natural area preserve to insure that the terms of the articles of dedication are being respected.

SOURCES: Laws, 1978, ch. 415, § 9; Laws, 2000, ch. 516, § 61, eff from and after passage (approved Apr. 30, 2000.)

CHAPTER 6

Motor Vehicle and Boat Replacement Program

Sec.
49-6-1. Definitions.
49-6-3. Wildlife Fisheries and Parks Motor Vehicle Fund; creation; funding; administration.
49-6-5. Motor vehicle replacement program; standards.
49-6-7 and 49-6-9. Repealed.

§ 49-6-1. Definitions.

For the purposes of this chapter, the following words are defined as follows:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "Executive director" means the chief officer of the department.

(d) "Motor vehicle" means passenger automobiles, trucks, heavy trucks, tractors, graders, other heavy motor-driven equipment, and all-terrain vehicles.

SOURCES: Laws, 1977, ch. 465, § 1; Laws, 1978, ch. 465, § 15; Laws, 1994, ch. 453, § 1, eff from and after passage (approved March 21, 1994).

Editor's Note — The substance of this chapter was originally enacted by Laws of 1964, ch. 226, and was designated as a Local Law and not codified, Subsequently, Laws of 1977, ch. 465, amended Laws of 1964, ch. 226, adding a provision directing the Attorney General of the State of Mississippi to ensure that the provisions of Laws of 1977, ch. 465, were codified and placed into the Mississippi Code of 1972.

§ 49-6-3. Wildlife Fisheries and Parks Motor Vehicle Fund; creation; funding; administration.

(1) There is created in the State Treasury a special fund to be known as the "Wildlife, Fisheries and Parks Motor Vehicle Fund." All funds derived from the sale of used motor vehicles, funds transferred from the "Game and Fish Protection Fund" and any other funds which may be needed for the purchase of motor vehicles, boats and outboard motors shall be deposited into this special fund. Other funds as needed may be transferred by the commission from the department's regular support appropriation. The commission may transfer funds from the motor vehicle fund to the game and fish protection fund as needed for the operation of the department. The motor vehicle fund is a special trust fund and the interest earned thereon shall be credited to the fund.

(2) The commission shall adopt regulations for the administration of the fund. The executive director shall administer the fund and expenditures may be made from the fund upon requisition by the executive director. The

department shall spend monies in the fund by an annual appropriation approved by the Legislature.

SOURCES: Laws, 1977, ch. 465, § 1; Laws, 1994, ch. 453, § 2; Laws, 2004, ch. 595, § 25, eff from and after July 1, 2004.

§ 49-6-5. Motor vehicle replacement program; standards.

The department shall establish and implement a motor vehicle replacement program to ensure the efficient and effective operation of the department. The program shall include replacement standards based on the type, operational environment and use of each motor vehicle and any other factors necessary for cost-effective determination of replacement needs.

SOURCES: Laws, 1977, ch. 465, § 1; Laws, 1994, ch. 453, § 3, eff from and after passage (approved March 21, 1994).

§§ 49-6-7 and 49-6-9. Repealed.

Repealed by Laws of 1994, ch. 453, §§ 4, 5 eff from and after passage (approved March 21, 1994).

[Laws, 1977, ch. 465, § 1]

Editor's Note — Former § 49-6-7 was entitled: Purchase of new vehicles, boats, motors and communication equipment; disposal of old equipment; multiple awards for purchase.

Former § 49-6-9 was entitled: Limits on expenditures from fund.

CHAPTER 7

Hunting and Fishing

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IN GENERAL

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49-7-67. Unlawful to sell, when.
49-7-68. Unlawful to engage in computer-assisted remote hunting; penalties.
49-7-69. Use of explosives and chemicals prohibited.
49-7-71. Unlawful to disturb traps.
49-7-73. Unlawful to disturb nests or eggs.
49-7-75. Unlawful to fire woods, when.
49-7-77. Game protected during high water or fire.
49-7-78. Canned hunts prohibited.
49-7-79. Unlawful to hunt on lands of others, when.
49-7-80. Releasing aquatic species or animals not indigenous to Mississippi without permit.
49-7-81. Unlawful methods of taking fish; exceptions; penalties.
49-7-83. Unlawful not to return to water game fish taken by net.
49-7-85. Repealed.
49-7-87. Fish, sale of, unlawful, when.
49-7-89. Fish dealers not to possess.
49-7-90. Possession of paddlefish in violation of law or regulation; penalties; permits and fees.
49-7-91. Unlawful to fish commercially in Muddy Bayou.
49-7-93. Killing deer or spotted fawn out of season; penalties.
49-7-95. Killing deer by headlighting or other lighting devices; killing livestock; harassment of wildlife; penalties.
49-7-96. Deer management zones; antler restrictions.
49-7-97. Liability of public officer for failure to perform duty.
49-7-99. Repealed.
49-7-101. General fines and penalties.
49-7-102. Repealed.
49-7-103. Seizure and confiscation of property used in illegal hunting or fishing, etc., as contraband.
49-7-105 through 49-7-131. Repealed.
49-7-133. Reciprocity agreement recognizing hunting and fishing licenses issued by participating states.
49-7-135. Compact concerning Pearl River authorized.
49-7-137. Lease of certain state lands for hunting, fishing and conservation purposes.
49-7-139. Seafoods excluded.
49-7-140. Importation and release of wild hogs; prohibition; penalties.
49-7-141. Penalties; Class I violations.
49-7-143. Penalties; Class II violations.
49-7-145. Repealed.
49-7-147. Interference with lawful taking of wildlife.

49-7-148. Access for hunters with disabilities; use of mobility related device.
49-7-149 and 49-7-150. Repealed.

§ 49-7-1. Definitions and interpretations.

For the purposes of this chapter, the following definitions and interpretations shall govern unless otherwise provided:

(a) The following wild animals are classed as game: bear, white-tailed deer, rabbits and squirrels.

(b) The following wild animals are classed as fur-bearing animals: muskrats, opossums, otters, weasels, minks, raccoons and bobcats.

(c) The following wild animals are classed as nuisance animals: wild hogs, nutria, beaver, fox, skunks and coyote.

(d) All freshwater fish in the following families are classed as game fish: Sunfish family (Centrarchidae) — including largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieu), spotted bass (Micropterus punctulatus), white crappie (Pomoxis annularis), black crappie (Pomoxis nigromaculatus), redear sunfish (Lepomis microlophus), bluegill (Lepomis macrochiris), warmouth (Lepomis gulosus), green sunfish (Lepomis cyanellus), longear sunfish (Lepomis megalotis), redbreast sunfish (Lepomis auritus) and shadow bass (Ambloplites ariommus); Perch family (Percidae) — including walleye (Stizostedion vitreum), sauger (Stizostedion canadense) and yellow perch (Perca flavescens); Pike family (Esocidae) — including redfin pickerel (Esox americanus americanus), grass pickerel (Esox americanus vermiculatus), chain pickerel (Esox niger); Temperate bass family (Moronidae) including — white bass (Morone chrysops), yellow bass (Morone mississippiensis), striped bass (Morone saxatilis) and hybrid striped bass (Morone chrysops x Morone saxatilis and/or Morone saxatilis x Morone chrysops).

The following fish are classed as nongame gross fish: in the Herring family (Clupeidae) — gizzard shad (Dorosoma cepedianum), threadfin shad (Dorosoma petenense); in the Catfish family (Ictaluridae) — channel catfish (Ictalurus punctatus), blue catfish (Ictalurus furcatus), flathead catfish (Pylodictus olivaris), yellow bullhead (Ameiurus natalis), black bullhead (Ameiurus melas), brown bullhead (Ameiurus nebulosus); in the Gar family — spotted gar (Lepisosteus oculatus), longnose gar (Lepisosteus osseus), shortnose gar (Lepisosteus platostomus), alligator gar (Atractosteus spatula); in the Eel family (Anguillidae) — American eel (Anguilla rostrata); in the Bowfin family (Amiidae) — bowfin (Amia calva); in the Paddlefish family (Polyodontidae) — paddlefish (Polyodon spathula); in the Minnow family (Cyprinidae) — common carp (Cyprinus carpio); in the Sucker family (Catostomidae) — river carpsucker (Carpoides carpio), quillback (Carpoides cyprinus), highfin carpsucker (Carpoides velifer), spotted sucker (Minytrema melanops), blacktail redhorse (Moxostoma poecilurum), smallmouth buffalo (Ictiobus bubalus), bigmouth buffalo (Ictiobus cyprinellus), black buffalo (Ictiobus niger); in the Drum family (Sciaenidae) — freshwater drum (Aplodinotus grunniens).

All fish native to Mississippi that are not classed as game fish or nongame gross fish are classed as nongame fish.

All fish native to foreign countries and all fish native to the United States but not native to Mississippi are classed as nonnative fish.

(e) The following are classed as game birds: geese, brant ducks, rails, coots, snipe, gallinules, moorhens, woodcock, crow, mergansers, wild turkey, quail and doves.

All other species of wild resident or migratory birds are classed as nongame birds.

(f) Closed season: the time during which birds, animals or fish may not be taken.

(g) Open season: the time during which birds, animals or fish may be lawfully taken.

(h) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(i) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(j) "Executive director" means the Executive Director of the Department of Wildlife, Fisheries and Parks.

SOURCES: Codes, 1942, § 5867; Laws, 1932, ch. 123; Laws, 1938, ch. 364; Laws, 1946, ch. 423, § 5; Laws, 1948, ch. 251, § 1; Laws, 1962, ch. 188, § 1; Laws, 1981, ch. 475, § 1; Laws, 1991, ch. 529, § 3; Laws, 1997, ch. 451, § 1; Laws, 2001, ch. 498, § 1; Laws, 2005, ch. 373, § 1; Laws, 2006, ch. 522, § 1; Laws, 2007, ch. 499, § 1, eff from and after passage (approved Mar. 27, 2007.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section's paragraph designations. The section was enacted with two paragraphs designated (d). The second paragraph designated (d) was changed to (e) and the remaining paragraphs were redesignated accordingly. The Joint Committee ratified the correction at its July 13, 2011, meeting.

Cross References — Direction that portion of all game and fish license fees collected each month be deposited into the Game and Fish Commission Motor Vehicle and Boat Fund, see § 49-6-3.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 49-7-1(b), by implication, designates coyote as "predator". Gilliland, Feb. 26, 1993, A.G. Op. #93-0092.

The Legislature plainly has the power to declare species of fish to have the status of gamefish, and prohibit its taking for commercial purposes. Woods, March 11, 1996, A.G. Op. #96-0143.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

§ 49-7-1.1. Declaration of public policy.

Hunting, trapping and fishing are vital parts of the heritage of the State of Mississippi. It shall be the public policy of the State of Mississippi to protect and preserve these activities. The Mississippi Commission on Wildlife, Fisheries and Parks, acting by and through the Mississippi Department of Wildlife, Fisheries and Parks, may regulate hunting, trapping and fishing activities in the State of Mississippi, consistent with its powers and duties under the law. No court of this state may enjoin, suspend, curtail or abrogate any hunting, trapping or fishing activity which is otherwise lawful under the laws of this state or the regulations of the commission, except upon a showing, by clear and convincing evidence, of an immediate threat to the public health, safety and welfare, or other imminent peril. It is, and shall be, the public policy of this state to promote hunting, trapping and fishing and other outdoor recreational opportunities and to preserve these activities for all generations to come.

SOURCES: Laws, 2007, ch. 520, § 2, eff from and after passage (approved Apr. 10, 2007.)

Editor's Note — Laws of 2007, ch. 520, § 1 provides as follows:
"SECTION 1. The Legislature finds that hunting, trapping and fishing are time-honored traditions in the State of Mississippi. From the time prior to statehood, many have enjoyed the bounty of Mississippi's natural resources whether hunting, trapping or fishing the forests and streams of Mississippi for subsistence or recreation. Indeed, hunting, trapping and fishing activity is a vital part of this state's effort to conserve, manage and protect its abundant populations of wild animals, birds and fish. To that end, the Legislature adopts the following as the public policy of the State of Mississippi."

§ 49-7-2. "Social Security Administration" construed to include Railroad Retirement Board.

The term "Social Security Administration," wherever used in Title 49, Chapter 7, Mississippi Code of 1972, shall also be construed to include the Railroad Retirement Board.

SOURCES: Laws, 1987, ch. 354, eff from and after July 1, 1987.

§ 49-7-3. Issuance of resident hunting or fishing licenses; possession of license.

(1) Any resident of the State of Mississippi shall be entitled to receive a resident fishing license.

(2) Any person domiciled within the State of Mississippi shall be entitled to receive a resident hunting license provided in Section 49-7-5. The domicile of a person is that person's principal or primary home or place of abode. A "principal or primary home or place of abode" is that home or place in which a person's habitation is fixed and to which he, whenever absent, has the present intention of returning after a departure of absence therefrom, regardless of the duration of the absence. The burden of proving domicile shall be on the person

claiming such status. The following evidence or other reliable evidence may be considered in establishing, but is not necessarily determinative of, domicile: driver's license, residence for income or other tax purposes, homestead exemption receipt, or any other means prescribed by the department. In the case of minors, domicile of the parents shall be used as evidence of the minor's domicile.

(3) A nondomiciliary of the state may be issued a resident hunting or fishing license or combination resident hunting/fishing license upon providing the following:

(a) A current identification card from a Mississippi college or university; or

(b) A current military identification card showing that the person is an active member of the United States Armed Forces (excluding Reserves and the National Guard) and proof that the person is stationed on a military base in Mississippi.

(4) A nondomiciliary of the state may be issued a special Armed Forces fourteen-day hunting and fishing license with the same hunting and fishing privileges and at the same fee of a resident sportsman's license, if the nondomiciliary is an active member of the United States Armed Forces (excluding Reserves and the National Guard) and his application is approved by the department. The applicant must file his application for the special fourteen-day license in the office of the department. The department shall establish requirements for proof of active military status and any other requirements it deems desirable. The department shall not issue more than two (2) special fourteen-day licenses to the same applicant per license year.

(5) A holder of a resident or nonresident license is required to carry the license on his person while engaged in hunting, trapping or fishing. Any penalty for not carrying a license while engaged in hunting, trapping or fishing shall be waived if the person can verify purchase of a license prior to the date of the violation.

(6) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 5870; Laws, 1932, ch. 123; Laws, 1942, ch. 250; Laws, 1950, ch. 218, §§ 1, 2; Laws, 1958, ch. 178; Laws, 1962, ch. 189, § 1; Laws, 1970, ch. 285, §§ 1, 2; Laws, 1971, ch. 371, § 1; Laws, 1989, ch. 416, § 1; Laws, 1991, ch. 563, § 1; Laws, 1994, ch. 408, § 3; Laws, 1995, ch. 580, § 1; Laws, 1997, ch. 588, § 18; Laws, 1999, ch. 397, § 1; Laws, 2004, ch. 587, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Hunting on bird and animal preserves, see § 49-5-5.

Satisfactory completion of hunter education course as prerequisite to procurement of hunting license, see § 49-7-20.

Lifetime sportsman license, see §§ 49-7-151 et seq.

Any resident between the ages of sixteen (16) and sixty-five (65) years, as defined in this section, fishing in the marine waters of the state, shall obtain a saltwater sports fishing license, see § 49-15-313.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-5. Fees for resident hunting, fishing, and combination hunting and fishing licenses; exemptions.

(1)(a) Any resident, as defined in Section 49-7-3, upon application, shall receive a combination resident hunting and fishing license for the sum of Seventeen Dollars ($17.00). Such license shall qualify the licensee to hunt under this chapter all game and fowl, including deer and turkey, and to fish in any county of the state.

(b) Any resident, as defined in Section 49-7-3, upon application, shall receive a resident combination small game hunting and fishing license for the sum of Thirteen Dollars ($13.00) together with the fee provided in Section 49-7-17 to the office or agent issuing such license. Such hunting license shall qualify the licensee to hunt and fish under this chapter all game and fowl, except deer and turkey, in any county in the state.

(c) Any resident of the State of Mississippi, as defined in Section 49-7-3, upon application, shall receive a resident small game license, and for it shall pay the issuing officer or agent the sum of Thirteen Dollars ($13.00), together with the fee provided in Section 49-7-17 to the officer or agent issuing such license. Such hunting license shall qualify the person holding the same to hunt under the provisions of this chapter, and in season, all game and fowl, except deer and turkey, in any county in the state.

(d) Any resident, as defined in Section 49-7-3, upon application, shall receive a sportsman's license for the sum of Thirty-two Dollars ($32.00). Such license shall qualify the licensee to hunt under this chapter all game and fowl, including deer and turkey, and to fish as provided by law, in any county in the state, and to hunt using primitive weapons and bow and arrow in the manner provided by law. The commission may notify the licensee of the expiration of his license, and the licensee may renew the license by mailing the sum of Thirty-two Dollars ($32.00) to the commission. A licensee who has not renewed the license within thirty (30) days after the expiration date shall be removed from the commission's records, and the licensee must apply to be placed on the renewal list.

(e) In addition to a hunting license allowing the taking of turkey, a resident who hunts turkey during a fall turkey season must purchase a fall turkey hunting permit for a fee of Five Dollars ($5.00) plus the fee provided in Section 49-7-17. A resident sportsman's licensee or resident lifetime sportsman licensee may hunt during the fall turkey season without purchasing a permit.

(f) The commission may offer a resident apprentice hunting license for a resident who does not have the required certificate of hunter education and may set the fee for the apprentice hunting license. An apprentice license may be purchased only one (1) time by a resident and the apprentice hunting licensee must be accompanied by a licensed or exempt resident hunter at least twenty-one (21) years of age when hunting.

(2)(a) Any resident citizen of the State of Mississippi who has not reached the age of sixteen (16) years or who has reached the age of sixty-five (65) years, or any resident citizen who is blind, paraplegic, or a multiple amputee, or who has been adjudged by the Veterans Administration as having a total service-connected disability, or has been adjudged to be totally disabled by the Social Security Administration shall not be required to purchase or have in his possession, a hunting or fishing license while engaged in such activities. A person exempt by reason of total service-connected disability, as adjudged by the Veterans Administration or who has been adjudged to be totally disabled by the Social Security Administration or who is blind, paraplegic or a multiple amputee, shall have in their possession and on their person proof of their age, residency, disability status or other respective physical impairment while engaged in the activities of hunting or fishing.

(b) Any resident who is a member of the Armed Forces, including the Reserves and National Guard, and on active duty outside the State of Mississippi is not required to purchase or have in his possession a hunting or fishing license while engaged in such activities on leave from active duty. Such resident shall have in his possession and on his person such proof as may be required by the commission.

(c) All exempt hunting and fishing licenses previously issued for disabilities shall be null and void effective July 1, 1993.

(d) The commission may offer a youth all-game hunting and fishing license for exempt youths who have a hunter education certificate and an all-game hunting and fishing license for other persons exempted under paragraph (a). Youths and other exempt persons shall not be required to purchase this license or have it in possession while hunting or fishing. The commission may establish a fee not to exceed Five Dollars ($5.00) for such licenses.

(3) No license shall be required of residents to hunt, fish or trap on lands in which the record title is vested in such person.

(4) Any person or persons exempt under this section from procuring a license shall be subject to and must comply with all other terms and provisions of this chapter.

(5) Any person authorized to issue any license under this section may collect and retain for the issuance of each license the additional fee authorized under Section 49-7-17.

SOURCES: Codes, 1942, §§ 5871, 5876; Laws, 1932, ch. 123; Laws, 1942, ch. 250; Laws, 1944, ch. 237, § 1; Laws, 1954, ch. 172; Laws, 1956, ch. 150; Laws, 1958, ch. 174; Laws, 1962, ch. 189, § 2; Laws, 1966, ch. 263, § 1; Laws, 1971, ch. 372, § 1; Laws, 1973, ch. 358, § 1; Laws, 1978, ch. 343, § 1; Laws, 1978, ch. 465, § 2; Laws, 1988, ch. 435, § 2; Laws, 1993, ch. 463, § 1; Laws, 2002, ch. 547, § 1; Laws, 2004, ch. 342, § 1; Laws, 2006, ch. 486, § 2; Laws, 2007, ch. 477, § 1, eff from and after July 1, 2007.

Editor's Note — Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Cross References — Issuance to certain handicapped persons of special license to hunt deer and small game with a crossbow, see § 49-7-38.

JUDICIAL DECISIONS

1. In general.

This exemption from license requirement applies only to the owner of the lake, and does not extend to persons who pay him for the privilege of fishing in it. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

ATTORNEY GENERAL OPINIONS

As to hunting license requirements, Miss. Code Section 49-7-5(3) states that no license shall be required of person to hunt, fish or trap on lands in which record title is vested; therefore, landowner may take coyote on his own land even if his hunting license has been suspended; this licensing requirement exception would apply only to the titled landowner, and would not exempt designated agent from necessity of having valid hunting license. Gilliland, Feb. 26, 1993, A.G. Op. #93-0092.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.
38 C.J.S., Game §§ 13, 14.

§§ 49-7-6 and 49-7-7. Repealed.

Repealed by Laws of 1989, ch. 377, § 8, eff from and after July 1, 1989.

§ 49-7-6. [En Laws, 1978, ch. 465, § 6; Laws, 1982, ch. 435, § 3; Laws, 1988, ch. 435, § 3]

§ 49-7-7. [Codes, 1942, § 5872; Laws, 1932, ch. 123; Laws, 1938, ch. 178; Laws, 1948, ch. 255, § 5; Laws, 1948, ch. 255, § 8; Laws, 1954, ch. 168, §§ 1, 2; Laws, 1966, ch. 264, § 1; Laws, 1968, ch. 258, § 1; Am Laws, 1974, ch. 452; Laws, 1978, ch. 465, § 3; Laws, 1982, ch. 435, § 4; Laws, 1988, ch. 435, § 4]

Editor's Note — Former § 49-7-6 provided for a fee for a combination nonresident hunting and fishing license.

Former § 49-7-7 provided a fee for nonresident hunting licenses.

§ 49-7-8. Hunting, fishing or trapping license for nonresident; fees; violations.

(1) No nonresident sixteen (16) years of age or older may hunt, fish, kill, take or trap any game animal, bird or fish without having acquired and having in his immediate possession a valid license issued by the Mississippi Commission on Wildlife, Fisheries and Parks.

(2) The commission shall have the following duties and powers:

(a) To prescribe the forms and types of nonresident licenses that a nonresident must obtain;

(b) To determine the total number of each type of nonresident license to be issued annually;

(c) To establish fees for nonresident licenses and the collection fees for the agent issuing such licenses; provided, however, that the fee for a nonresident all game hunting license shall not be less than Sixty Dollars ($60.00);

(d) To exercise all incidental powers necessary to develop a nonresident licensing program.

(3) A nonresident who violates this section or any licensing regulation of the commission is guilty of a misdemeanor and shall be punished as provided in Section 49-7-21(3).

SOURCES: Laws, 1989, ch. 377, § 1; Laws, 1994, ch. 345, § 1, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 49-7-11.

1.-5. [Reserved for future use.]

6. Under former § 49-7-11.

No deprivation of property without due process is worked by requiring others than the owner to obtain a fishing license in order to fish in a privately owned landlocked artificial lake stocked by the owner. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

A fishing license is required of a nonresident who has paid for the privilege of fishing in a privately owned landlocked artificial lake stocked by the owner. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

§ 49-7-9. Resident fishing licenses.

(1)(a) Each resident of the State of Mississippi, as defined in Section 49-7-3, fishing in the public fresh waters of the state, including lakes and reservoirs, but not including privately owned ponds and streams, shall pay an annual license fee of Eight Dollars ($8.00). Any resident purchasing a public freshwater fishing license as prescribed in this subsection shall be entitled to fish, in accordance with the regulations and ordinances of the commission, in all public fresh waters within the territory of the State of Mississippi.

(b) A resident may purchase a resident fishing license valid for a period of three (3) days for the sum of Three Dollars ($3.00).

(c) No license shall be required of any resident citizen of the State of Mississippi who has not reached the age of sixteen (16) years or who has reached the age of sixty-five (65) years or who is blind, paraplegic, a multiple amputee or has been adjudged by the Veterans Administration as having a total service-connected disability, or has been adjudged totally disabled by the Social Security Administration. Such person shall not be required to purchase or have in his possession a hunting or fishing license while engaged in such activities.

(d) A person exempt by reason of age, total service-connected disability as adjudged by the Veterans Administration or total disability as adjudged by the Social Security Administration or who is blind, paraplegic or a multiple amputee, shall have in their possession and on their person proof of their age, residency, disability status or other respective physical impairment while engaged in the activities of hunting or fishing.

(e) Any resident who is a member of the Armed Forces, including the Reserves and National Guard, and on active duty outside the State of Mississippi is not required to purchase or have in his possession a hunting or fishing license while engaged in such activities on leave from active duty. Such resident shall have in his possession and on his person such proof as may be required by the commission.

(2) Any resident engaged in fishing for commercial purposes and selling or peddling nongame gross fish at retail or selling or shipping same at wholesale, as to markets, dealers or canning plants, shall pay Thirty Dollars ($30.00) for a commercial fishing license. Each piece of commercial fishing equipment must have a commercial fishing equipment tag (at a cost of Three Dollars ($3.00) each) attached. A piece of commercial fishing equipment is defined as: One (1) each hoop or barrel net; one thousand (1,000) feet or less of trotline; one thousand (1,000) feet or less of snagline; three thousand (3,000) feet or less of gill netting; or three thousand (3,000) feet or less of trammel netting. Netting of over three thousand (3,000) feet is prohibited.

Upon payment of the Thirty Dollars ($30.00) license and tags for use of hoop or barrel nets, the purchaser of the license is hereby permitted to use lead nets thirty-five (35) yards in length for each two (2) barrel nets used, but not to exceed seven (7) lead nets.

(3) Each person taking nongame gross fish as defined in Section 49-7-1, of any kind from the fresh waters of the state shall be considered a producer and shall be entitled to sell his own catch to anyone.

(4) Each resident buying or handling nongame gross fish secured from commercial fishermen or others for the purpose of resale, whether handled on a commission basis or otherwise, and each resident shipping nongame gross fish not his own catch out of the State of Mississippi shall be considered a wholesale dealer and shall pay a commercial fishing license in the sum of Thirty Dollars ($30.00) per annum. Resident wholesale dealers' licenses shall be issued only to persons who have been bona fide residents of the State of Mississippi for at least six (6) months.

(5) Each resident buying nongame gross fish from a licensed wholesale dealer or licensed commercial fisherman for retail sale to the consumer only on

rural or urban routes shall pay the sum of Thirty Dollars ($30.00) per annum for a commercial fishing license to do so.

(6) Each resident engaged in the buying and selling of nongame gross fish as a wholesale dealer's agent, whether on a commission or salary basis, or otherwise, and not selling in the open market, or any vessel buying nongame gross fish to make up a cargo, shall pay a commercial fishing license in the sum of Thirty Dollars ($30.00) per annum and shall be responsible for any illegal transaction ensuing between the time he purchases from the fisherman and the time the fish are accepted by the wholesaler by whom he is employed.

(7) Any resident using a wooden or plastic slat basket shall pay a fee of Thirty Dollars ($30.00) per basket per annum in addition to a commercial license. Slat baskets are defined as commercial fishing devices used solely for the capture of catfish and made entirely of wood and/or plastic slats in a boxlike or cylindrical shape. Slat baskets shall not exceed six (6) feet in length nor exceed fifteen (15) inches in width and height or diameter, may have no more than two (2) throats, and must have at least four (4) slot openings of a minimum one and one-half (1-½) by twenty-four (24) inches evenly spaced around the sides of the catch area. The one and one-half (1-½) inch wide slots must begin at the rear of the basket and run twenty-four (24) inches toward the throat end of the basket. Slat baskets may only be fished in public waters of the State of Mississippi that are opened to commercial fishing. Slat baskets shall be placed at least one hundred (100) yards apart and may not be used with any form of leads, netting or guiding devices. Each slat basket shall have a metal slat basket tag attached to it with the tag number of the owner imprinted on it. Such slat basket tags shall be purchased from the department at a fee of Three Dollars ($3.00) per tag. Any other identification of the owner of the basket shall meet such specifications as set by the department. Slat baskets may be fished statewide except where specifically prohibited.

Any violation of the provisions of this subsection shall be a Class I violation as prescribed in Section 49-7-141.

(8) It is unlawful for any person coming under the terms of this section to offer for sale undersized nongame gross fish, as set out and classified herein.

(9) All persons fishing in privately owned lakes or ponds shall have specific permission to do so from the owner of such lake or pond.

(10) The first weekend of "National Fishing and Boating Week" in June of each year is designated as "Free Fishing Weekend." Any person may sport fish without a license on "Free Fishing Weekend," additionally, July 4 is still designated as free fishing day on the Mississippi Gulf Coast.

(11) Any person authorized to issue any license under this section may collect and retain for issuing each license the additional fee authorized under Section 49-7-17.

SOURCES: Codes, 1942, § 5906; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1938, ch. 178; Laws, 1938, Ex. Sess. ch. 78; Laws, 1942, ch. 250; Laws, 1958, ch. 175; Laws, 1966, ch. 265, § 1; Laws, 1973, ch. 451, § 1; Laws, 1978, ch. 465, § 4; Laws, 1982, ch. 435, § 5; Laws, 1987, ch. 413; Laws, 1988, ch. 435, § 5; Laws, 1988, ch. 600; Laws, 1989, ch. 377, § 2; Laws, 1993, ch. 463, § 2; Laws,

1995, ch. 402, § 1; Laws, 1998, ch. 409, § 1; Laws, 2007, ch. 471, § 1; Laws, 2007, ch. 477, § 2; Laws, 2010, ch. 332, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 1 of ch. 471, Laws of 2007, effective July 1, 2007 (approved March 27, 2007) at 3:03 p.m., amended this section. Section 2 of ch. 477, Laws, 2007, effective July 1, 2007 (approved March 27, 2007) at 4:45 p.m., also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Editor's Note — Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Amendment Notes — The 2010 amendment rewrote (10).

Cross References — Additional hunting and fishing fee for wildlife heritage fund, and purchase of hunting and fishing areas, see § 49-5-78.

Nonresident freshwater commercial fishing licenses and fees, see § 49-7-12.

Lifetime sportsman license, see §§ 49-7-151 et seq.

Multiyear licenses, see § 49-7-22.

License for taking mussels, see § 49-9-9.

JUDICIAL DECISIONS

1. In general.

An admission of guilt made by a defendant spontaneously and before arresting game wardens had an opportunity to advise him of his constitutional rights was admissible against him when tried on the charge of possessing undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

Game wardens who had observed the defendant catch catfish smaller than the legal minimum by means of illegal traps in a public lake and subsequently transport them by boat to a point where he loaded them on a pickup truck were lawfully entitled to arrest the defendant and search his truck, and their evidence was admissible in court. Russell v. State, 220 So. 2d 334 (Miss. 1969).

The fact that a defendant who admitted that he was catching fish "trying to make a living" had not paid the commercial fisherman's privilege license required by Code 1942, § 5609 was no defense to a charge of possession of undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

This section [Code 1942, § 5906] is not pertinent to the question whether a nonresident needs a fishing license to fish in a privately owned artificial lake stocked by the owner. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

ATTORNEY GENERAL OPINIONS

If the lakes are privately owned, people fishing these lakes need not obtain a fishing license to fish them. Oden, Aug. 27, 2004, A.G. Op. 04-0415.

RESEARCH REFERENCES

ALR. Applicability of state fishing license laws or other public regulations to fishing in private lake or pond. 15 A.L.R.2d 754.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

§ 49-7-10. Annual three-day group pier fishing license [Repealed effective July 1, 2012].

(1) The Commission on Wildlife, Fisheries and Parks may issue a three-day group pier fishing license. The owner of a pier in public or private waters may obtain an annual group pier fishing license for a fee of Twenty-five Dollars ($25.00). A person shall not be required to purchase or have in his possession an individual resident or nonresident fishing license while fishing from a licensed pier with the permission of the owner of the licensed pier.

(2) The owner of the pier shall notify the appropriate commission of the dates that he will use the permit.

(3) This section shall stand repealed from and after July 1, 2012.

SOURCES: Laws, 2010, ch. 384, § 1, eff from and after July 1, 2010.

Editor's Note — A former § 49-7-10 [Laws, 1993, ch. 603, § 1; Repealed by Laws 1994, ch. 578, § 65, effective from and after July 1, 1994] related to marine water and saltwater licensing requirements. Similar provisions are found in § 49-15-313.

§ 49-7-11. Repealed.

Repealed by Laws of 1989, ch. 377, § 9, eff from and after July 1, 1989.

[Codes, 1942, § 5904; Laws, 1932, ch. 123; Laws, 1934, ch. 286; Laws, 1936, ch. 221; Laws, 1938, ch. 178; Laws, 1946, ch. 423, § 6; Laws, 1956, ch. 151; Laws, 1968, ch. 258, § 2; Laws, 1970, ch. 287, § 1; Am Laws, 1973, ch. 423, § 1; Laws, 1978, ch. 465, § 5; Laws, 1982, ch. 435, § 6; Laws, 1988, ch. 435, § 6]

Editor's Note — Former § 49-7-11 provided for nonresident fishing licenses.

§ 49-7-12. Reciprocal agreements with other states; nonresident freshwater commercial fishing licenses; fees; penalties.

(1) The commission may promulgate rules and regulations for nonresident recreational and commercial permits and licenses in order to promote and to enter into reciprocal agreements with other states.

(2) The commission may issue and prescribe the forms, types and fees of nonresident freshwater commercial fishing licenses to be sold by the department and not by licensing agents.

(3) The commission may require a nonresident to purchase the same type and number of freshwater commercial fishing licenses and pay the same fees that are required of Mississippi residents to engage in like activity in the nonresident's state.

(4) Any nonresident who engages in freshwater, commercial fishing without having the required licenses is guilty of a Class I violation and

punishable as provided under Section 49-7-141 and shall forfeit any equipment, gear or nets used in the offense.

SOURCES: Laws, 2007, ch. 471, § 2, eff from and after July 1, 2007.

Cross References — Resident fishing licenses, see § 49-7-9.
Multiyear licenses, see § 49-7-22.

§ 49-7-13. Fee for resident trapper's license; permission of landowners to trap; identification of traps; placing or setting traps near public roads or streets; selling of skins and meat of certain animals during and after trapping season.

(1) Any resident of the state sixteen (16) years of age or older, upon application, is entitled to receive a state trapper's license with tag for the sum of Twenty-five Dollars ($25.00), plus the fee provided in Section 49-7-17. This license shall be required of each helper or assistant sixteen (16) years of age or older employed or used by a trapper.

(2) No person shall trap on the lands of another unless he has the permission of the landowner.

(3) Each trap shall have an identification number permanently inscribed on the trap or attached to the trap by a metal tag. Every trapper shall visit his traps at least every thirty-six (36) hours. The conservation officer may take up any traps not properly marked.

(4) Except as otherwise provided in this section, no person shall place or set a trap on or within one hundred (100) feet of any street or public road. Public roads shall not be construed to mean public waterways.

(5) This section shall not apply to a landowner trapping on his own lands except subsection (4).

(6) A trapper shall be allowed to trap fur-bearing animals during trapping season, and sell the pelts of fur-bearing and nuisance animals during the trapping season and for ten (10) days after the close of the season. The meat of legally acquired raccoons, opossums and muskrats may also be bought and sold during trapping season, and for ten (10) days after the close of the season.

(7) A municipality or county, or any person who has contracted with a municipality or county for the purpose authorized in this subsection, may place or set only snare traps within one hundred (100) feet of any road or street located within such municipality or county. Before the action authorized by this section is taken, the governing authority of the municipality or the board of supervisors of the county shall make a finding that such placement of snare traps is reasonable and necessary to protect the public safety by removing fur-bearing and nuisance animals that threaten the safety of public roads and bridges. Snares shall be submerged at least fifty percent (50%).

SOURCES: Codes, 1942, § 5873; Laws, 1932, ch. 123; Laws, 1978, ch. 465, § 7; Laws, 1988, ch. 435, § 7; Laws, 1993, ch. 463, § 3; Laws, 1999, ch. 401, § 1;

Laws, 2005, ch. 489, § 1; Laws, 2006, ch. 522, § 2; Laws, 2010, ch. 491, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added "Except as otherwise provided in this section" at the beginning of (4); and added (7).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 16, 47.

CJS. 38 C.J.S., Game §§ 10, 13,14.

§ 49-7-15. Repealed.

Repealed by Laws of 1989, ch. 377, § 10, eff from and after July 1, 1989.

[Codes, 1942, § 5874; Laws, 1932, ch. 123; Am Laws, 1982, ch. 435, § 7; Laws, 1988, ch. 435, § 8]

Editor's Note — Former § 49-7-15 provided for a fee for nonresident trapper's license.

§ 49-7-16. Fur dealer or regular buyer of fur bearing animals; license; fees; possession of furs; tagging.

(1) Any person, whether a resident or nonresident of this state, who is a fur dealer, or who regularly buys fur-bearing animals from trappers or hunters, shall be required to obtain a license under this section. Application for such license shall be made to any of the officials authorized to issue licenses under Chapter 7 of Title 49, Mississippi Code of 1972. The license fee shall be Fifty Dollars ($50.00) for residents, together with the fee provided in Section 49-7-17. The license shall be good for one (1) year from the date of issuance unless suspended or revoked earlier, and it is renewable upon payment of the fee. The license shall be carried on the person of the holder whenever he is engaged in the business of fur dealer or engaged in buying fur-bearing animals.

(2) Dealers or those persons who regularly buy fur-bearing animals from trappers or hunters are authorized to possess inventories of dried or stretched furs and skins at any time. However, dealers or other fur buyers are authorized to buy, transport, sell or offer for sale inventories of fur for only ninety (90) days beyond the close of the trapping season set by the commission. The commission shall, in its discretion, extend the ninety-day period for buying, transporting, selling or offering for sale inventories of fur.

(3) The commission may require tagging of furs to account for harvest of a species in a specific location. Dealers shall be required to maintain accurate records of purchases. Such dealer records and fur houses shall be open to conservation officers on request for inspection without warrant.

(4) Persons acquiring fur for the sole purpose of tanning, dressing, manufacturing or otherwise preparing finished fur products are authorized to buy, sell, possess and transport inventories of fur and finished fur products at any time for these and related purposes.

SOURCES: Laws, 1978, ch. 465, § 13; Laws, 1980, ch. 448; Laws, 1982, ch. 435, § 8; Laws, 1988, ch. 435, § 9; Laws, 1989, ch. 377, § 3; Laws, 2000, ch. 516, § 62, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Additional hunting and fishing fee for wildlife heritage fund and purchase of hunting and fishing areas, see § 49-5-78.

§ 49-7-17. License agents; bonding requirements; additional license fee for officer or person issuing license; additional fee to recoup costs of issuing licenses.

(1) The department may provide for the appointment of persons as license agents to sell license certificates for hunting, trapping or fishing as authorized under Section 49-7-21.

The department may, by administrative rule, establish qualifications, standards and regulations for such license agents.

(2) Each license agent shall be required to be covered under a surety bond. The department may establish, by administrative rule, the procedures for the bonding of its license agents, which procedures may include the implementation of a blanket bonding system. All premiums for surety bonds required under this section shall be at the expense of the license agents.

(3) Any officer or person authorized to issue any hunting or fishing license or permit or any combination game and fish license under the laws of this state shall have the power and authority to collect and retain for the issuance of such license the sum of One Dollar ($1.00), in addition to the license fee provided by law, when such license or permit is sold to a resident of this state. The Commission on Wildlife, Fisheries and Parks is authorized, in its discretion, to contract with license agents for services rendered for an additional amount, not to exceed One Dollar ($1.00), in addition to the license fee provided by law.

(4) The Commission on Wildlife, Fisheries and Parks is authorized to establish, set and collect an additional fee for any license sold that will recoup the department's cost of issuing the license, conducting any electronic transaction therefor, and generally recovering the department's administrative costs of selling licenses and maintaining the electronic databases of those sales.

SOURCES: Codes, 1942, § 5874.5; Laws, 1950, ch. 219; Laws, 1978, ch. 465, § 8; Laws, 1988, ch. 435, § 10; Laws, 1989, ch. 377, § 6; Laws, 1990, ch. 309, § 1; Laws, 1993, ch. 544, § 1; Laws, 1997, ch. 528, § 1; Laws, 2003, ch. 355, § 1; Laws, 2010, ch. 328, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (4).

Cross References — Fee for combination resident hunting and fishing license, see § 49-7-5.

Payment of fee for fishing license, see § 49-7-9.

Payment of fee for issuance of a resident trapper's license, see § 49-7-13.

Payment of fee for issuance of resident or nonresident license to purchase fur-bearing animals from trappers or to be a fur dealer, see § 49-7-16.

Authorization for certain constables to retain the fee upon issuing hunting and fishing licenses, see § 49-7-23.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-19. Prohibition against issuing license to person physically or mentally unfit to carry or use firearm.

It shall be unlawful for any officer, authorized to issue the licenses mentioned in this chapter, to knowingly issue a resident license or nonresident license to any person physically or mentally unfit to carry or use firearms.

SOURCES: Codes, 1942, § 5875; Laws, 1932, ch. 123.

Cross References — Satisfactory completion of hunter education course as prerequisite to procurement of hunting license, see § 49-7-20.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-20. Requirement of satisfactory completion of hunter education course; resident apprentice hunting license.

(1) It is unlawful for any person born on or after January 1, 1972, to procure any Mississippi hunting license, except a resident apprentice hunting license, unless the person has been issued certification of satisfactory completion of a hunter education course approved by the department.

(2) It is unlawful for any person to issue any Mississippi hunting license, except a resident apprentice hunting license, to any person born on or after January 1, 1972, unless the purchaser has provided valid certification of satisfactory completion of a hunter education course approved by the department.

(3) It is unlawful for any person to fraudulently obtain a hunter education certification.

(4) The department may revoke any hunting license or hunter education certification upon determination that the holder was not entitled to issuance or obtained the license or certification by any fraudulent means.

SOURCES: Laws, 1985, ch. 445, § 1; Laws, 1995, ch. 409, § 5; Laws, 2006, ch. 486, § 3, eff from and after July 1, 2006.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-20.1. Child hunter safety; hunter education course; supervision by adult who holds valid Mississippi license for species being hunted.

(1)(a) To reduce hunting accidents of children under license age, to protect the safety of these children and to promote hunter safety, a child at least twelve (12) years of age and under sixteen (16) years of age must have a certificate of satisfactory completion of a hunter education course approved by the department before hunting in this state.

(b) A child at least twelve (12) years of age and under sixteen (16) years of age may hunt without having the certificate of hunter education required under this subsection if the child is in the presence and under the direct supervision of a licensed or exempt hunter at least twenty-one (21) years of age when hunting.

(2) A child under the age of twelve (12) must be in the presence and under the direct supervision of a licensed or exempt hunter at least twenty-one (21) years of age when the child is hunting.

(3) A licensed hunter supervising a child as provided in this section must hold a valid Mississippi license for the species being hunted.

(4) There is no penalty for a violation of this section, but to protect the safety of the child a conservation officer may require the child to end the hunt and may unload the firearm and may take the firearm and the child to an adult.

SOURCES: Laws, 2000, ch. 405, § 1; Laws, 2006, ch. 486, § 1; Laws, 2007, ch. 484, § 1, eff from and after July 1, 2007.

§ 49-7-21. License certificates; hunting, trapping or fishing without license prohibited; penalties.

(1)(a) The licenses for hunting, trapping or fishing shall be issued on a form prepared by the executive director and supplied to the bonded agents authorized to issue licenses. The forms shall bear the name and social security number or driver's license number of the applicant. All annual licenses shall be valid for one (1) year after the date of its issuance. The licenses shall be issued in the name of the commission and be countersigned by the bonded agent issuing same.

(b) A person may purchase a license from the office of the department without appearing in person.

(c) The commission may design, establish, and administer a program to provide for the purchase, by electronic means, of any license, permit, registration or reservation issued by the commission or department.

(2) Any person authorized to issue licenses for hunting, trapping or fishing in this state who attempts to issue a license on a form other than one as prescribed by this section, or attempts to prepare a license certificate in any manner other than on the form prescribed by this section, and furnished by the executive director, is guilty of a Class II violation, and shall be punished as

provided in Section 49-7-143, Mississippi Code of 1972, and the person convicted shall be forever barred from issuing licenses in the State of Mississippi.

(3)(a) Any resident or nonresident who hunts, takes or traps any wild animal, bird or fish must possess a valid license issued by the commission, unless specifically exempted under this chapter.

(b) A resident who violates this subsection shall be fined Five Hundred Dollars ($500.00). If at the hearing date or the date of payment of the fine the resident shows proof of the required Mississippi license, the fine shall be reduced to One Hundred Dollars ($100.00). If the resident shows proof that the required license was purchased before the date of the violation, the case shall be dismissed and all court costs shall be waived against the defendant.

(c) In addition to the penalty imposed in paragraph (b), any resident who is not able to show proof of the required Mississippi license, shall be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(4)(a) Any nonresident, who hunts or traps without the required license is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for the first offense and shall forfeit hunting and trapping privileges for a period of one (1) year. For the second offense a nonresident shall be fined in an amount of not less than One Thousand Dollars ($1,000.00) nor more than One Thousand Five Hundred Dollars ($1,500.00) or imprisoned in the county jail for not more than thirty (30) days, or both such fine and imprisonment and shall forfeit hunting and trapping privileges for a period of two (2) years. For any third or subsequent offense, a nonresident is guilty of a Class I violation and shall be punished as provided in Section 49-7-141, Mississippi Code of 1972.

(b) The nonresident shall also be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(c) Forfeiture of hunting, trapping and fishing privileges may be waived if, at the hearing date or the date of payment of the fine, the nonresident shows proof of the required nonresident hunting or trapping license.

(5) Any nonresident who fishes without the required license is guilty of a misdemeanor and, upon conviction, shall be fined in an amount not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) for the first offense. For the second or any subsequent offense a nonresident shall be fined in an amount not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) and that nonresident shall also be assessed by the court an administrative fee as prescribed under subsection (6) of this section.

(6) In addition to any other fines or penalties imposed under subsection (4) or (5) of this section, the person convicted shall be assessed by the court an administrative fee equal in amount to the cost of the hunting, trapping or fishing license fee that such person unlawfully failed to possess at the time of the violation, the amount of which license fee shall be entered upon the ticket

or citation by the charging officer at the time the ticket or citation is issued. The clerk of the court in which the conviction takes place, promptly shall collect all administrative fees imposed under this subsection and deposit them monthly with the State Treasurer, in the same manner and in accordance with the same procedure, as nearly as practicable, as required for the collection, receipt and deposit of state assessments under Section 99-19-73. However, all administrative fees collected under the provisions of this subsection shall be credited by the State Treasurer to the account of the Department of Wildlife, Fisheries and Parks, and may be expended by the department upon appropriation by the Legislature.

(7) Any person who obtains a license under an assumed name or makes a materially false statement to obtain a license is guilty of a felony and shall be subject to a fine of Two Thousand Dollars ($2,000.00) or may be imprisoned for a term not to exceed one (1) year, or both.

SOURCES: Codes, 1942, § 5877; Laws, 1932, ch. 123; Laws, 1938, ch. 178; Laws, 1952, ch. 191; Laws, 1974, ch. 569, § 18; Laws, 1978, ch. 465, § 9; Laws, 1980, ch. 471; Laws, 1981, ch. 486, § 1; Laws, 1985, ch. 452, § 9; Laws, 1990, ch. 334, § 1; Laws, 1994, ch. 408, § 1; Laws, 1994, ch. 629; Laws, 1995, ch. 580, § 2; Laws, 1999, ch. 571, § 1; Laws, 2000, ch. 375, § 1; Laws, 2002, ch. 511, § 1; Laws, 2007, ch. 472, § 2; Laws, 2008, ch. 477, § 1; Laws, 2010, ch. 329, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (3)(c); and made minor stylistic changes in (4) and (5).

Cross References — Fees for nonresident hunting, fishing and trapping licenses, see § 49-7-8.

Satisfactory completion of hunter education course as prerequisite to procurement of hunting license, see § 49-7-20.

Multiyear licenses, see § 49-7-22.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-22. Multiyear licenses; fees; additional license fee for person issuing license.

(1) The commission may authorize the issuance of a multiyear license not to exceed four (4) years of any license issued by the commission. The fee for a multiyear license shall be commensurate with the total of the annual fees for the annual license for the number of years of the multiyear license.

(2) A person authorized to issue licenses by the department may collect and retain for issuing each license the fee authorized under Section 49-7-17.

SOURCES: Laws, 2007, ch. 472, § 1, eff from and after July 1, 2007.

Cross References — Issuance of resident hunting or fishing licenses; possession of license generally, see § 49-7-3.
Combination resident hunting and fishing license, see § 49-7-5.
Nonresident hunting, fishing or trapping licenses, see § 49-7-8.
Resident fishing licenses, see § 49-7-9.
Nonresident freshwater commercial fishing licenses, see § 49-7-12.
Resident trapper's license, see § 49-7-13.
Fur dealer or regular buyer of fur bearing animals licenses, see § 49-7-16.

§ 49-7-23. Sale of hunting and fishing licenses by constables designated as deputy conservation officers.

The executive director may designate constables as deputy conservation officers, and constables so designated may be permitted to sell hunting and fishing licenses and may retain the fee provided in Section 49-7-17 for issuing each such license.

SOURCES: Codes, 1942, § 5857; Laws, 1932, ch. 123; Laws, 1936, ch. 221; Laws, 1974, ch. 569, § 19; Laws, 1978, ch. 465, § 10; Laws, 1988, ch. 435, § 11; Laws, 2000, ch. 516, § 63, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Constables, generally, see § 19-19-1.
Appointment of conservation officers generally, see § 49-1-13.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife; §§ 13, 14.

§ 49-7-25. Records and reports.

Each officer authorized to issue licenses shall keep in a book to be supplied to him by the commission, a correct and complete list, in numerical order, of all licenses, resident or nonresident, issued by him. He shall enter at the close of each week the name and residence of each individual to whom a license was issued during that week, and shall on or before the tenth day of each month, forward to the executive director, on blanks furnished to him by the executive director, a complete list of all licenses so granted, with the name and address of each licensee, and shall pay over to the executive director all sums collected by him for licenses during the preceding month, and at the end of the license year shall render a final report and return to the executive director all license stubs and all unused or mutilated license blanks. Thereupon the executive director shall cause the account of the officer to be audited and a final statement furnished such officer on the condition of the account.

SOURCES: Codes, 1942, § 5880; Laws, 1932, ch. 123; Laws, 2000, ch. 516, § 64, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-26. Development of tagging and reporting program for deer and turkey to collect harvest data and monitor bag limit compliance; penalties for violation of turkey or deer tagging program.

(1)(a) The department may develop, implement and regulate a tagging and reporting program to collect harvest data and monitor bag limit compliance by any means as provided in this section.

(b) The department may charge a fee for the tagging program.

(c) The department shall provide an annual report to the Wildlife, Fisheries and Parks Committees of the Senate and the House of Representatives.

(2)(a) The department may establish a tagging and reporting program for deer harvested by nonresidents.

(b) A nonresident who violates any law or regulation of the nonresident deer tagging program shall be subject to the fine and forfeiture penalties provided for a nonresident hunting without a license under Section 49-7-21. In addition, a nonresident shall be assessed the administrative fee prescribed in this section.

(3)(a) The department may establish a tagging and reporting program for turkey.

(b) A person who violates any law or regulation of the turkey tagging program is guilty of a Class III violation and shall be subject to the fines provided in 49-7-101. In addition, a person shall be assessed the administrative fee prescribed in this section.

(4)(a) A person convicted of a first violation of the tagging program shall be assessed an administrative fee of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), which shall be imposed and collected upon conviction. A person convicted of a second or subsequent violation shall be assessed an administrative fee of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), which shall be imposed and collected upon conviction.

(b) The clerk of the court shall collect and deposit the administrative fees with the State Treasurer, in the same manner and in accordance with the same procedure, as nearly as practicable, as required for the collection and deposit of state assessments under Section 99-19-73.

(c) The administrative fees shall be credited to the Department of Wildlife, Fisheries and Parks and may be expended by the department upon appropriation by the Legislature.

(5) Each deer or turkey taken or possessed in violation of the tagging program is a separate offense.

SOURCES: Laws, 2009, ch. 510, § 3, eff from and after July 1, 2009.

§ 49-7-27. Revocation and suspension of licenses and privileges; penalties for hunting, trapping or fishing without license or privilege.

(1) The commission may revoke any hunting, trapping, or fishing privileges, license or deny any person the right to secure such license if the person has been convicted of the violation of any of the provisions of this chapter or any regulation thereunder. The revocation of the privilege, license or refusal to grant license shall be for a period of one (1) year. However, before the revocation of the privilege or license shall become effective, the executive director shall send by registered mail notice to the person or licensee, who shall have the right to a hearing or representation before the commission at the next regular meeting or a special meeting. The notice shall set out fully the ground or complaint upon which revocation of, or refusal to grant, the privilege or license is sought.

(2) Any person who is convicted for a second time during any period of twelve (12) consecutive months for violation of any of the laws with respect to game, fish or nongame fish or animals shall forfeit his privilege and any license or licenses issued to him by the commission and the commission shall not issue the person any license for a period of one (1) year from the date of forfeiture.

(3) Failure of any person to surrender his license or licenses upon demand made by the commission or by its representatives at the direction of the commission shall be a misdemeanor and shall be punishable as such.

(4) Any violator whose privilege or license has been revoked, who shall, during the period of revocation, be apprehended for hunting or fishing, shall have imposed upon him a mandatory jail term of not less than thirty (30) days nor more than six (6) months.

(5) The commission is authorized to suspend any license issued to any person under this chapter for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(6) If a person is found guilty or pleads guilty or nolo contendere to a violation of Section 49-7-95, and then appeals, the commission shall suspend or revoke the hunting privileges of that person pending the determination of his appeal.

(7)(a) If a person does not comply with a summons or a citation or does not pay a fine, fee or assessment for violating a wildlife law or regulation, the commission shall revoke the fishing, hunting, or trapping privileges of that person. When a person does not comply or fails to pay, the clerk of the court shall notify the person in writing by first class mail that if the person does not comply or pay within ten (10) days from the date of mailing, the court will notify the commission and the commission will revoke the fishing, hunting or trapping privileges of that person. The cost of notice may be added to other court costs. If the person does not comply or pay as required, the court clerk shall immediately mail a copy of the court record and a copy of the notice to the commission. After receiving notice from the court, the commission shall revoke the fishing, hunting or trapping privileges of that person.

(b) A person whose fishing, hunting or trapping privileges have been revoked under this subsection shall remain revoked until the person can show proof that all obligations of the court have been met.

(c) A person shall pay a Twenty-five Dollar ($25.00) fee to have his privileges reinstated. The fee shall be paid to the department.

SOURCES: Codes, 1942, § 5881; Laws, 1932, ch. 123; Laws, 1964, ch. 229, § 1; Laws, 1994, ch. 408, § 4; Laws, 1996, ch. 507, § 10; Laws, 1998, ch. 347, § 1; Laws, 2000, ch. 388, § 1; Laws, 2001, ch. 354, § 1, eff from and after July 1, 2001.

Editor's Note — Section 49-1-1 provides that the term "State Game and Fish Commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Any person authorized to issue licenses may collect and retain, for each saltwater fishing license issued, the additional fee authorized under this section, see § 49-15-313.

Killing deer by headlighting or other lighting device, see § 49-7-95.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 36A C.J.S., Fish § 28.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-29. Wholesale minnow dealers.

(1) This section shall be known as the "Mississippi Wholesale Minnow Dealers Law."

(2) Definitions. For the purposes of this section, the following definitions shall apply:

(a) The term "wholesale minnow dealer" means any person selling minnows to a person for resale.

(b) The term "person" means any person, firm or corporation.

(c) The term "minnow" shall only mean golden shiner (Notemigonus crysoleucas), fathead minnow (Pimephales promelas), goldfish (Carassius auratus), common carp or Israeli carp (Cyprinus carpio), emerald shiner (Notropis atherinoides), western mosquitofish (Gambusia affinis), eastern mosquitofish (Gambusia holbrooki) and gulf killfish (Fundulus grandis).

(3) The department shall license wholesale minnow dealers, as required under this section. However, bona fide residents of Mississippi growing minnows on their own property within the State of Mississippi shall be exempt from these license requirements.

(4) It is unlawful for any person except those exempted by subsection (3) to sell minnows at wholesale within the State of Mississippi without a commercial fishing license.

(5) A resident wholesale minnow dealer shall certify that he is a resident of the state and shall apply to the department for a commercial fishing license.

(6) A nonresident wholesale minnow dealer shall apply to the department for a nonresident commercial fishing license. This nonresident license fee shall be set by the department.

(7) Each sale of minnows in violation of this section shall be punishable as a Class I violation as provided in Section 49-7-141.

(8) A copy of the commercial fishing license shall be carried at all times in each vehicle which transports minnows into or within the State of Mississippi. Each violation of this subsection shall be punishable as a Class I violation as provided in Section 49-7-141. However, no person charged with violating this subsection shall be convicted if he produces in court, or files with the clerk of the court before the date of appearance, proof that he held a valid commercial fishing license at the time that he was charged with a violation.

SOURCES: Codes, 1942, § 5872.7; Laws, 1962, ch. 191, §§ 1-8; Laws, 1978, ch. 465, § 11; Laws, 1985, ch. 452, § 2; Laws, 1989, ch. 377, § 4; Laws, 1993, ch. 463, § 9; Laws, 2001, ch. 494, § 1, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

§ 49-7-30. Season for nongame gross fish.

The season for taking nongame gross fish by hand or rope shall be from May 1 to July 15.

SOURCES: Laws, 2001, ch. 349, § 2, eff from and after passage (approved Mar. 11, 2001.)

§ 49-7-31. Open season on deer.

(1) The open season on deer shall be as follows:

(a) With bow and arrow: October 1 through the Friday prior to Thanksgiving.

(b) With guns and with dogs: From the Saturday prior to Thanksgiving through December 1.

(c) With primitive weapons and without dogs: December 2 through December 15.

(d) With guns and without dogs: December 16 through December 23. However, the commission may allow hunting statewide or in specific areas with any legal weapon which it may designate without dogs after the end of the last season for hunting deer with guns and with dogs, but the season with legal designated weapons and without dogs shall not extend beyond January 31.

(e) The commission shall establish an extended season with primitive weapons and bow and arrow without dogs from February 1 through February 15 for the area south of U.S. Highway 84 and east of Mississippi Highway 35 only for legal bucks. Any antlered deer taken in this area during any open season under this section must be a legal buck as defined in this paragraph. For purposes of this paragraph, the term "legal buck" means a deer with antlers of four (4) points or more with a minimum inside spread of ten (10) inches or a minimum main beam length of thirteen (13) inches. The commission may regulate the taking of deer with antlers of four (4) points or less under this paragraph for the proper management of antlered deer. The commission may delay the opening date and change the length of bow and arrow season in subsection (1)(a) in this area.

(f) With guns and with dogs: December 24 through a date fixed by the commission that will provide a total of thirty-nine (39) days of hunting deer with guns and with dogs when added to the number of days provided for hunting deer with guns and with dogs in paragraph (b).

(2) The commission may set and regulate the deer seasons on wildlife management areas which it administers.

(3)(a) The commission may allow the harvesting of antlerless deer in the districts or zones upon the recommendation of the executive director based upon good and substantial quantitative data and research evaluations that demonstrate that the harvesting is necessary to properly manage the herd.

(b) The commission, only upon the recommendation of the executive director, may allow the harvesting of antlerless deer during the deer season with guns and with dogs by a majority vote of the commission.

(c) Nothing in this subsection prohibits the harvesting of either-sex deer by landowners or leaseholders on private lands under the deer management assistance program prescribed or approved by the executive director.

(4) The commission may provide a special permit for the harvesting of deer when they are depredating and destroying crops. The department shall

supervise the harvesting and provide for the salvaging of the meat of the animals. The commission may authorize the department to assist any farmer in this state, who sustains crop damage by wildlife, in eradication of the problem wildlife.

SOURCES: Codes, 1942, § 5882; Laws, 1932, ch. 123; Laws, 1934, ch. 285; Laws, 1936, ch. 221; Laws, 1938, ch. 365; Laws, 1940, ch. 220; Laws, 1944, ch. 234, § 4; Laws, 1948, ch. 255, § 6; Laws, 1960, ch. 162; Laws, 1962, ch. 192; Laws, 1964, ch. 230; Laws, 1968, ch. 259, § 2; Laws, 1970, ch. 286, § 1; Laws, 1972, ch. 493, § 1; Laws, 1975, ch. 327, § 1; Laws, 1977, ch. 468, § 1; Laws, 1980, ch. 305; Laws, 1981, ch. 475, § 2; Laws, 1981, 1st Ex Sess, ch. 9; Laws, 1983, ch. 301, § 1, ch. 527; Laws, 1990, ch. 305, § 1; Laws, 1992, ch. 555, § 1; Laws, 1994, ch. 633, § 1; Laws, 1995, ch. 592, § 1; Laws, 1996, ch. 486, § 2; Laws, 1997, ch. 360, § 1; Laws, 1998, ch. 521, § 1; Laws, 1999, ch. 312, § 1; Laws, 2001, ch. 349, § 1; Laws, 2004, ch. 548, § 1; Laws, 2005, ch. 373, § 2; Laws, 2005, ch. 529, § 4; Laws, 2009, ch. 510, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 2 of ch. 373, Laws, 2005, effective from and after its passage (March 15, 2005), amended this section. Section 4 of ch. 529, Laws, 2005, effective from and after July 1, 2005, also amended this section. As set out above, this section reflects the language of Section 4 of ch. 529, Laws, 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Laws of 2003, ch. 368, § 2, provides:

"SECTION 2. (1) The Department of Wildlife, Fisheries and Parks shall conduct a study of the feasibility of establishing a procedure which requires any person who takes or harvests any deer to physically mark or identify each deer taken by means of a tag or similar method. The department shall complete its study and file a report of its findings and recommendations with the Chairman of the House Game and Fish Committee and the Chairman of the Senate Wildlife, Fisheries and Parks Committee not later than January 15, 2004.

"(2) The Department of Wildlife, Fisheries and Parks shall conduct a study on the effects of extending the deer hunting season to January 31. The report shall not be limited to reducing the number of days at the beginning of the season for the purpose of adding days at the end of January, nor shall the report prohibit the establishment of zones for deer season opening and closing dates. The department shall complete its study and file a report of its findings and recommendations with the Secretary of the Senate and the Clerk of the House no later than January 1, 2004."

Cross References — Game season beginning on Sunday, see § 49-7-35.

Antler restrictions in this section do not apply to deer management zones with antler resrictions, see § 49-7-96.

Illegality of hunting or taking migratory waterfowl without procuring migratory waterfowl stamp and having such stamp in one's possession, see § 49-7-163.

RESEARCH REFERENCES

ALR. Applicability, to domesticated or captive game, of game laws relating to closed season. 74 A.L.R.2d 974.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13.

§ 49-7-31.1. Open season on deer; requirements for wearing hunter orange during any gun season; penalties.

(1) When hunting deer during any gun season on deer, a hunter must wear in full view at least five hundred (500) square inches of solid unbroken fluorescent orange. This requirement shall not apply to a hunter while the hunter is in a fully enclosed deer stand.

(2) A violation of this section is a Class III violation and is punishable as provided in Section 49-7-101.

SOURCES: Laws, 2005, ch. 529, § 1, eff from and after July 1, 2005.

§ 49-7-31.2. Open season for game birds.

The open season for game birds shall be as follows:

(a) On bobwhite quail: The season shall open on Thanksgiving Day and run through the first Saturday in March next following.

(b) On pheasant: There shall be no open season on pheasant.

(c) On wild turkey: The commission may fix the spring season between March 1 and May 15. In addition, the commission may fix special fall either-sex seasons.

(d) On migratory birds: The open season for migratory birds shall be the season prescribed by the Federal Migratory Bird Treaty regulations.

SOURCES: Laws, 2005, ch. 529, § 2, eff from and after July 1, 2005.

Cross References — If the time fixed by statute for the beginning of a game season falls on a Sunday, the season will begin on the preceding Saturday, see § 49-7-35.

Federal Aspects — Migratory Bird Treaty Act, see 16 USCS §§ 703 et seq.

§ 49-7-31.3. Open season for game animals other than deer.

The open season on game animals except deer shall be as follows:

(a) On squirrel:

(i) Zone 1: For areas north of Highway 82 plus those portions of Sunflower County and Washington County south of Highway 82 the season shall open on the Saturday nearest October 1 and run through February 28.

(ii) Zone 2: For areas between Highway 82 and Highway 84, plus such portions of the state south of Highway 84 and west of Interstate 55, the season shall open on the Saturday nearest October 15 and run through February 28.

(iii) Zone 3: For areas south of Highway 84 and east of Interstate 55 the season shall open on the last Saturday in October and run through February 28.

(b) On rabbits: The season shall open on the Saturday nearest October 15 and run through February 28 next following, and when rabbits are depredating or destroying crops, the owner of the crops or his tenants may shoot the rabbits with guns.

SOURCES: Laws, 2005, ch. 529, § 3, eff from and after July 1, 2005.

Cross References — If the time fixed by statute for the beginning of a game season falls on a Sunday, the season will begin on the preceding Saturday, see § 49-7-35.

§ 49-7-31.4. Open season on fur-bearing animals; hunting raccoons and bobcats with dogs; additional open season on raccoons.

(1) The commission may fix the open season on fur-bearing animals between November 1 and March 1 next following and fix the open season for hunting opossums, raccoons and bobcats with dogs and guns by licensed hunters from October 1 to February 28 next following; but raccoons and bobcats may be run, hunted, chased or pursued throughout the year with dogs by licensed hunters.

(2) The commission may establish an additional open season on raccoon from July 1 through October 1, and the bag limit on raccoon during the additional open season shall be one (1) per party, per night.

SOURCES: Laws, 2005, ch. 529, § 6, eff from and after July 1, 2005.

Cross References — If the time fixed by statute for the beginning of a game season falls on a Sunday, the season will begin on the preceding Saturday, see § 49-7-35.

§ 49-7-31.5. Hunting, trapping and taking of nuisance animals; unlawful to trap certain animals outside of open season for fur-bearing animals; hunting nuisance animals with dogs, electronic calls, bait and lures authorized; exceptions; hunting wild hogs.

(1) The hunting, trapping and taking of nuisance animals shall be regulated by the commission. The commission may adopt regulations to regulate the hunting, trapping and taking of nuisance animals and to control the population of nuisance animals.

(2)(a) Landowners, agricultural leaseholders or their designated agents may take predatory and nuisance animals year-round on lands owned or leased by them.

(b) Landowners, agricultural leaseholders or their designated agents may take nuisance animals with any type of weapon and may take nuisance animals during the night after legal hunting hours on lands owned or leased by them with a permit issued by the department.

(c) No license is required for a resident landowner hunting or trapping nuisance animals on his own land. An agricultural leaseholder, designated agent and any other person must possess either an all-game hunting license or trapping license, unless otherwise exempt.

(3) The taking of any animal or animals other than nuisance animals by the use of a trap or traps is unlawful except during the time the season is open for the taking of fur-bearing animals.

(4) Nuisance animals may be run, chased or pursued with dogs, except as provided in Section 49-7-32, year-round by licensed hunters.

(5) Nuisance animals may be hunted with the aid of electronic calls.

(6) Nuisance animals may be hunted or trapped with the aid of bait and lures, on private lands, according to regulations adopted by the commission.

(7) Any part of a nuisance animal may be bought and sold year-round.

(8)(a) Wild hogs may not be caught or trapped and released into the wild at a location different from the location where the wild hog was caught or trapped.

(b) A violation of this subsection is a Class I violation and is punishable as provided under Section 49-7-141.

(9) When hunting wild hogs during any open gun season on deer, a hunter must wear in full view at least five hundred (500) square inches of solid unbroken fluorescent orange.

SOURCES: Laws, 2005, ch. 529, § 7; Laws, 2006, ch. 522, § 3; Laws, 2007, ch. 499, § 2, eff from and after passage (approved Mar. 27, 2007.)

Cross References — Mississippi Commission on Wildlife, Fisheries and Parks, see § 49-4-4.

If the time fixed by statute for the beginning of a game season falls on a Sunday, the season will begin on the preceding Saturday, see § 49-7-35.

§ 49-7-32. Restrictions on hunting with dogs during turkey season.

The commission may establish closed seasons on the running, hunting, chasing or pursuing with dogs of raccoon, fox or other wild animals or wild birds during turkey season in designated areas.

SOURCES: Laws, 1975, ch. 327, § 2(1); Laws, 2000, ch. 516, § 65, eff from and after passage (approved Apr. 30, 2000.)

Cross References — As to open seasons generally, see § 49-7-31.

§ 49-7-33. Use of scents, lures, sound devices or supplemental feed for hunting and trapping.

(1) It is unlawful to hunt, trap or kill any wild bird or wild animal of any kind with the aid of bait, recordings of bird or animal calls, or electrically amplified imitations of calls of any kind, except a person:

(a) May use electrically amplified sound devices for hunting crow;

(b) May use liquid scents for any animal or bird;

(c) May use lures for trapping fur-bearing animals, according to regulations adopted by the commission;

(d) May take nuisance animals as provided in Section 49-7-31.5; and

(e) May take deer with the use of supplemental feed.

(2) The commission, in its discretion, may relax the restrictions regarding the use of lures or sound devices if a condition arises or exists, as decided by the

State Board of Health or county board of health, that may endanger persons or livestock in a certain community, county or area.

SOURCES: Codes, 1942, § 5897; Laws, 1932, ch. 123; Laws, 1942, ch. 253; Laws, 1944, ch. 234, § 7; Laws, 1971, ch. 322, § 1; Laws, 1984, ch. 417; Laws, 1996, ch. 486, § 3; Laws, 2005, ch. 523, § 1; Laws, 2007, ch. 499, § 3; Laws, 2007, ch. 600, § 4; Laws, 2010, ch. 365, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 2 of ch. 499, Laws of 2007, effective upon passage (approved March 27, 2007), amended this section. Section 4 of ch. 600, Laws of 2007, effective July 1, 2007 (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 600, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor's Note — Subsection (1) of § 2, Laws of 1975, ch. 327, amending § 49-7-33, was assigned, pursuant to directions from the attorney general's office, to new § 49-7-32.

Amendment Notes — The 2010 amendment, in (1)(e), substituted "with the use of supplemental feed" for "with the aid of bait if the commission allows the use of bait as provided under Section 49-7-33.1," and deleted the last sentence, which read: "This paragraph shall repeal on July 1, 2010."

Cross References — Taking deer with the use of supplemental feed, see § 49-7-33.1.

If the time fixed by statute for the beginning of a game season falls on a Sunday, the season begins on the preceding Saturday, see § 49-7-35.

JUDICIAL DECISIONS

1. Constitutionality.

The statute prohibits an activity that common sensibly constitutes "baiting" and therefore, is not so vague as to be unconstitutional. Corry v. State, 710 So. 2d 853 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 49-7-33 applies to licensed and/or unlicensed hunters. Gilliland, Feb. 26, 1993, A.G. Op. #93-0092.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 10.

§ 49-7-33.1. Taking deer with the use of supplemental feed.

(1)(a) The Commission on Wildlife, Fisheries and Parks shall allow the taking of deer with the use of supplemental feed and may place any reasonable conditions or restrictions on such taking.

(b) The Commission on Wildlife, Fisheries and Parks shall establish a zone or zones of contiguous counties for the management and implementation of a program to allow the taking of deer with the use of supplemental feed.

(c) The commission shall allow the taking of deer with the use of supplemental feed on private lands only.

(2) The commission shall take any action it deems necessary and use its emergency powers to prevent the introduction of disease, to control disease, to eradicate disease, and to manage the taking of deer with the use of supplemental feed.

(3)(a) The Department of Wildlife, Fisheries and Parks shall study and analyze all relevant data and issues with regard to the taking of deer with the supplemental feed program, including, but not limited to, the impact that the program has upon the health and density of deer populations and other wildlife, its effect on surrounding habitat, the effectiveness of wildlife law enforcement, the extent to which hunters who participate in the program are successful in harvesting deer and are supportive of the program, the perception of the program by the general public, and the extent to which the program has a favorable impact on economic development and tourism.

(b) The department shall file annual progress reports with the Legislature. The department shall file a final report with recommendations on the feasibility of continuing the taking of deer with the use of supplemental feed.

(4) A violation of this section or any regulation of the commission promulgated under this section shall be punishable as a Class II violation as defined in Section 49-7-143, and if the violator is a nonresident, then upon conviction, he or she shall lose the opportunity to obtain a nonresident license as defined in Section 49-7-8.

SOURCES: Laws, 2007, ch. 600, § 3; Laws, 2010, ch. 365, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1) through (3), substituted "with the use of supplemental feed" for "with the aid of bait"; in (1)(a), substituted "shall allow" for "may allow," and inserted "reasonable"; in (1)(b), substituted "shall establish" for "may establish"; in (2), substituted "shall take any action" for "may take any action"; in (3)(a), deleted "If the commission allows the taking of deer with the aid of bait" from the beginning, and substituted "supplemental feed program" for "aid of bait program"; and in (4), substituted the language beginning "punishable as a Class II violation" through to the end for "punishable by a fine of Five Hundred Dollars ($500.00)"; and deleted (5), which read: "This section shall repeal July 1, 2010."

Cross References — If the time fixed by statute for the beginning of a game season falls on a Sunday, the season begins on the preceding Saturday, see § 49-7-35.

§ 49-7-34. Hunting enclosures; permits; regulations; penalties for violation.

(1) The Commission on Wildlife, Fisheries and Parks shall not prohibit the operation of a hunting enclosure for hunting or pursuing rabbit, fox or coyote, but the commission may prescribe regulations and require a permit for the operation of such hunting enclosures. Application for the permit shall be submitted to the Department of Wildlife, Fisheries and Parks. The department

shall inspect and approve such hunting enclosure before issuing a permit. The permit fee shall be a reasonable amount, to be determined by the commission.

(2) Such hunting enclosure shall consist of an area fully enclosed by a fence. Such fence shall be constructed in such a manner as may be prescribed by the commission.

(3) A person who violates this section or any regulation pertaining to hunting enclosures is guilty of a Class II violation and is punishable as provided in Section 49-7-143, Mississippi Code of 1972, and may, at the discretion of the commission, have his permit revoked for a period of twelve (12) months. A second or subsequent violation shall be punished by the maximum allowable fine as provided in Section 49-7-143.

SOURCES: Laws, 1993, ch. 591, § 1; Laws, 2007, ch. 516, § 1, eff from and after July 1, 2007.

§ 49-7-35. Game season beginning on Sunday.

Whenever the time fixed by statute for the beginning of a game season shall fall on a Sunday, the season shall begin on the preceding Saturday.

SOURCES: Codes, 1942, § 5882.5; Laws, 1966, ch. 267, § 1, eff from and after passage (approved May 17, 1966).

Cross References — Application of this section to special hunting season in which primitive firearms may be used, see § 49-7-31.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13.

§ 49-7-37. Hunting of game with falcons or hawks, bow and arrow or primitive firearms; special open seasons on deer and small game; license fees; penalties.

(1) Any resident of this state licensed to hunt or otherwise take any legal game bird or game animal in this state by or with the use of firearms, may hunt, kill, shoot or otherwise take game animals or game birds by the use of falcons or hawks as may be prescribed by the commission and in compliance with federal guidelines.

(2) The commission may extend the special archery seasons on any public hunting projects, game refuges or prescribed areas having surplus deer populations.

(3) The killing by primitive firearms of an antlerless deer or any other deer protected during the regular deer season is prohibited, but the commission may designate areas of the state in which the killing of antlerless deer may be permitted or limited.

(4) The commission may make reasonable rules and regulations concerning the special seasons with falcons and hawks, bow and arrow and primitive

firearms which it deems necessary and proper. The commission shall define the term "primitive firearm" for purposes of this section and other law or regulation.

(5) The use of dogs shall be prohibited for hunting deer during any of the special hunting seasons.

(6) In addition to a hunting license allowing the taking of deer, any resident desiring to hunt deer with bow and arrow or primitive firearm during primitive weapon or archery season or special hunts established by the commission shall purchase a special resident archery and/or primitive firearms license at a fee of Fourteen Dollars ($14.00) for each license plus the fee provided in Section 49-7-17.

(7) Any person violating this section is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(8) All seasons provided for herein shall begin on Saturday.

SOURCES: Codes, 1942, § 5872.5; Laws, 1958, ch. 173, §§ 1-4; Laws, 1962, ch. 190; Laws, 1968, ch. 259, § 1; Laws, 1972, ch. 454, § 1; Laws, 1973, ch. 478, § 1; Laws, 1977, ch. 468, § 2; Laws, 1978, ch. 465, § 12; Laws, 1982, ch. 435, § 9; Laws, 1985, ch. 452, § 10; Laws, 1988, ch. 435, § 12; Laws, 1989, ch. 377, § 5; Laws, 1993, ch. 463, § 4; Laws, 1994, ch. 633, § 2; Laws, 2001, ch. 347, § 1; Laws, 2002, ch. 364, § 1, eff from and after July 1, 2002.

Cross References — Additional hunting and fishing fee for wildlife heritage fund, and purchase of hunting and fishing areas, see § 49-5-78.

Beginning of season when statutory date falls on Sunday, see § 49-7-35.

Issuance to certain handicapped persons of special license to hunt deer and small game with a crossbow, see § 49-7-38.

Bag limits, see § 49-7-41.

Penalties for unlawful taking of deer, see §§ 49-7-93, 49-7-95, 49-7-101.

Lifetime sportsman license, see §§ 49-7-151 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 47-49.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 10, 13, 14.

§ 49-7-38. Crossbow hunting licenses for elderly and disabled persons.

(1) The commission may issue a special license to hunt deer, turkey and small game with a crossbow to any person sixty-five (65) years of age or older or to any person having a disability which totally and permanently prevents the person from using a longbow or other conventional archery equipment as first certified by one (1) physician duly licensed to practice medicine in the state. The commission shall designate the fee for the license. The commission shall set the crossbow season for small game. A special licensee under this

section may take deer or turkey with a crossbow during the respective seasons on deer and turkey.

(2) The commission may issue a crossbow permit to hunt with a crossbow during the open seasons on deer with guns and primitive weapons. A person required to have a hunting license must have a license to take deer and turkey in order to obtain a crossbow permit. The commission shall establish a fee for the permit.

SOURCES: Laws, 1985, ch. 340; Laws, 1994, ch. 398, § 1; Laws, 2000, ch. 343, § 1; Laws, 2004, ch. 532, § 1; Laws, 2005, ch. 525, § 1; Laws, 2008, ch. 468, § 1, eff from and after July 1, 2008.

Cross References — Special hunt by handicapped persons in natural area at Arkabutla Lake, see § 49-7-40.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 38 C.J.S. Game; Conservation and Preservation of Wildlife §§ 13, 14.

§ 49-7-38.1. Special hunting permit for youth under age 18 who have life threatening illnesses.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks shall establish a special hunting permit for youth under the age of eighteen (18) who have a life threatening illness. This permit may be for any number of days in length but only for the class of persons deemed to have a life threatening illness by the commission. This special hunting permit for youth having a life threatening illness may occur anytime during the calendar year and for any game bird or game animal. However, the commission may not allow these permits during any time that conflicts with laws governing the taking of federally protected birds or species. The commission shall select participants, set the cost of permits, if any, the number of permits to be issued and the length of the special permits.

(2) The commission may establish and regulate special youth hunts for all nonmigratory game birds and animals outside of the open season on wildlife management areas and on private lands for youth under the age of eighteen (18) who are deemed to have a life threatening illness. This permit may be for any number of days in length but only for the class of persons deemed to have a life threatening illness by the commission. The commission shall select participants, set the cost of permits, if any, the number of permits to be issued and the length of the special permit.

SOURCES: Laws, 2010, ch. 339, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the fourth sentence of (1) by deleting the words "any other seasons" from the end of the sentence. The Joint Committee ratified this correction at its August 16, 2012, meeting.

§ 49-7-39. Special hunt for youth and persons with disabilities in Natchez State Park; primitive weapon season in Natchez State Park; commission may establish such hunts in other state parks; commission may authorize special youth hunts for nonmigratory birds; special hunting season for youth to run concurrently with primitive weapon season on deer.

(1) The commission shall establish a special hunting season for youth under the age of sixteen (16) and for handicapped persons in the Natchez State Park. The commission shall also establish a primitive weapon season in the Natchez State Park. The selection of participants in the primitive weapon season shall be by public drawing from all qualified applications. The commission shall set the number of permits to be issued and the length of the special seasons.

(2) The commission may also establish a special hunting season for youth and handicapped persons or a primitive weapon season as provided in this section in any other state park under the jurisdiction of the department but shall only do so upon the recommendation of the staff of the department as approved by the commission. The commission shall select participants and set the number of permits to be issued and the length of the special seasons.

(3) The commission may establish and regulate special youth hunts for all nonmigratory game birds and animals outside of the open season on wildlife management areas and on private lands.

(4) The commission shall establish and regulate a special hunting season for youth under the age of sixteen (16) to run concurrently with the primitive weapons season on deer.

SOURCES: Laws, 2005, ch. 529, § 5 eff from and after July 1, 2005; Laws, 2008, ch. 552, § 1, eff from and after July 1, 2008.

Editor's Note — Former § 49-7-39 regulated the operation of deer camps during deer hunting season.

A former § 49-7-39 [Codes, 1942, § 5899.5; Laws, 1950, ch. 223, §§ 1-6; Am Laws, 1985, ch. 452, § 11; Repealed by Laws 1989, ch. 332, § 1, eff from and after July 1, 1989] regulated the operation of deer camps during deer hunting season.

Amendment Notes — The 2008 amendment added (4).

§ 49-7-40. Special hunt by handicapped persons in natural area at Arkabutla Lake.

The commission may adopt regulations to provide for a special hunt by handicapped persons in the natural area at Arkabutla Lake designated by the U.S. Corps of Engineers. The hunt and any such regulations must be approved by the U.S. Corps of Engineers. The following restrictions apply to any such hunt:

(a) The hunt shall be open to wheelchair-bound physically disabled persons;

(b) Selection of participants shall be by public drawing from all qualified applications received;

(c) No more than thirty (30) permits shall be issued;

(d) The hunt shall not exceed a total of six (6) days;

(e) A hunting license shall not be required of resident or nonresident applicants;

(f) Any other actions the commission and the U.S. Corps of Engineers deem necessary for a safe and productive hunt.

SOURCES: Laws, 1993, ch. 367, § 1; Laws, 1997, ch. 361, § 1, eff from and after July 1, 1997.

Cross References — Beginning of season when statutory date falls on Sunday, see § 49-7-35.

Crossbow hunting license for handicapped persons, see § 49-7-38.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 29 et seq.

§ 49-7-41. Bag limits.

(1) The commission may set the bag limits for game animals, birds and fish, unless the bag limits are established by the Legislature by statute.

(2)(a) The bag limit on antlered deer is one (1) per day, not to exceed three (3) per license year. The commission may regulate the taking of deer with antlers of four (4) points or less for the proper management of antlered deer.

(b) Any antlered deer may be taken by permit when it is necessary to manage deer on lands under the deer management assistance program or wildlife management areas. A written management justification issued by the department must accompany any request for such a permit. Any antlered deer harvested under this permit must be identified with a tag immediately upon possession. Antlered deer taken by permit shall not be subject to the daily bag limit or the annual bag limit on antlered deer. The department shall include a report on permits issued, to whom issued and deer harvested in the department's annual deer program report.

(c) For hunters less than sixteen (16) years of age, one (1) of the three (3) buck bag limit may be any antlered buck.

(3)(a) The bag limit on antlerless deer is one (1) per day, not to exceed five (5) per license year. Antlerless deer may be taken only in the areas prescribed by order of the commission. It is illegal to take a spotted fawn in any season.

(b) It is unlawful for a nonresident to kill an antlerless deer except: (i) a nonresident may take antlerless deer on lands that the title is vested in the nonresident or on lands that the nonresident has leased the hunting and fishing rights; or (ii) a nonresident who has a native son or daughter nonresident lifetime sportsman license or a resident lifetime sportsman license may take antlerless deer on private lands, wildlife management areas or national wildlife refuges.

(4) The bag limit on antlerless deer set by this section shall not apply to private lands under the deer management assistance program or the fee-based antlerless program as approved by the department.

SOURCES: Codes, 1942, § 5908; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1956, ch. 153; Laws, 1966, ch. 266, § 1; Laws, 1970, ch. 288, § 1; Laws, 1975, ch. 375; Laws, 1990, ch. 448, § 1; Laws, 1992, ch. 453, § 2; Laws, 1994, ch. 633, § 3; Laws, 1995, ch. 592, § 2; Laws, 1999, ch. 502, § 1; Laws, 2000, ch. 527, § 1; Laws, 2003, ch. 368, § 1; Laws, 2005, ch. 522, § 1; Laws, 2009, ch. 510, § 2, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in paragraph (b) of subsection (2) and in subsection (3). The word "anterless" was changed to "antlerless" in the appropriate locations. The Joint Committee ratified the corrections at its May 20, 1998 meeting.

Editor's Note — Laws of 2003, ch. 368, § 2, provides:

"SECTION 2. (1) The Department of Wildlife, Fisheries and Parks shall conduct a study of the feasibility of establishing a procedure which requires any person who takes or harvests any deer to physically mark or identify each deer taken by means of a tag or similar method. The department shall complete its study and file a report of its findings and recommendations with the Chairman of the House Game and Fish Committee and the Chairman of the Senate Wildlife, Fisheries and Parks Committee not later than January 15, 2004.

"(2) The Department of Wildlife, Fisheries and Parks shall conduct a study on the effects of extending the deer hunting season to January 31. The report shall not be limited to reducing the number of days at the beginning of the season for the purpose of adding days at the end of January, nor shall the report prohibit the establishment of zones for deer season opening and closing dates. The department shall complete its study and file a report of its findings and recommendations with the Secretary of the Senate and the Clerk of the House no later than January 1, 2004."

Cross References — Exclusion of deer taken by bow and arrow, see § 49-7-37.

Antler restrictions in this section do not apply to deer management zones with antler resrictions, see § 49-7-96.

Illegality of hunting or taking migratory waterfowl without procuring migratory waterfowl stamp and having such stamp in one's possession, see § 49-7-163.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 50.

CJS. 36A C.J.S., Fish §§ 30-34.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-7-42. Training bird dogs through use of release pens and tamed and identified quail.

It is lawful at all times for any person, upon the issuance of a permit by the commission, to train bird dogs through the use of release pens and tamed and identified quail. The tamed quail shall be identified through the use of tags or dye. Permits shall be issued upon approval of the commission and upon payment of the sum of Three Dollars ($3.00) each. The permits shall be displayed openly upon each release pen. A permit shall be valid for a period of one (1) year from the date of issuance. The training of bird dogs and the taking of birds shall be conducted under the rules and regulations of the commission. The tamed and identified quail may be recaptured through the use of release pens when the pens have been properly identified by a permit attached thereto.

SOURCES: Laws, 1975, ch. 391; Laws, 2000, ch. 516, § 66, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Penalty for unlawful shipping of quail or other game birds, see § 49-7-101.

§ 49-7-43. Regulation of certain Mississippi lands purchased by federal government.

The executive director shall have authority to close all hunting and fishing within the lands contracted for with the federal government pursuant to the provisions of Section 49-5-23 for such period of time as may, in the opinion of the executive director, be necessary; shall have authority from time to time to prescribe the season for hunting or fishing therein, to fix the amount of fees required for special hunting licenses and to issue such licenses, to prescribe the number of animals and game, fish and birds that shall be taken therefrom and the size thereof, and to prescribe the conditions under which the same may be taken.

Any person violating any of the rules so promulgated by the executive director, or who shall hunt or fish upon such lands at any time, other than those times specified by the executive director, shall, upon conviction therefor be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or imprisoned for not less than ten (10) days nor more than thirty (30) days for each and every offense.

SOURCES: Codes, 1942, § 5926; Laws, 1938, ch. 179; Laws, 2000, ch. 516, § 67, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Fines and penalties for other offenses, see § 49-7-101.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 32.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-7-45. Certain acts declared unlawful; dismissal upon proper proof of actions for failure to register or possess boat's registration card.

(1) It is unlawful for any person:

(a)(i) To hunt, chase, kill or to pursue with the intent to take, kill or wound any wild animal or wild bird in violation of this chapter;

(ii) To hunt, take, kill or wound any game animal or game bird with a gun larger than 10 gauge;

(iii) To hunt, take, wound or shoot at any game bird:

(A) From any motorboat or other craft having a motor attached unless the motor has been completely shut off and its progress has ceased. A craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from a craft under power; or

(B) From any sinkbox or battery except in waters of the Gulf Coast.

(b) To wound, drown, shoot, capture, take or otherwise kill any deer from a boat.

(c) To lend or transfer or borrow or to use or display while hunting, trapping or fishing, a license or tag of another.

(d) To aid in the securing of a license for or to knowingly issue a license for any person not legally entitled to same.

(e) To hunt, trap or fish in this state after the right to do so has been denied by the commission or the license therefor has been revoked.

(f) To hunt or trap any birds, game or wild animals during the closed season.

(g) Any person violating paragraphs (b), or (f) is guilty of a Class II offense and shall be punished as provided in Section 49-7-143.

(2) Any citation issued to a boat operator for not registering or possessing the boat's registration card shall be dismissed, along with all related court costs if the boat operator can verify that the boat was properly registered prior to the date of violation. A boat operator may submit a copy of his or her boat's proper registration card, certified by the clerk or magistrate of the court holding the trial or hearing, along with all related court costs, to the court or magistrate before the date of the trial or hearing and the citation shall be dismissed under this subsection without the boat operator or the boat operator's counsel being present.

SOURCES: Codes, 1942, § 5883; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1944, ch. 234, § 5; Laws, 1954, ch. 170; Laws, 1980, ch. 419; Laws, 1985, ch. 452, § 12; Laws, 1993, ch. 521, § 3; Laws, 1994, ch. 408, § 2; Laws, 1998, ch. 381, § 1, eff from and after July 1, 1998.

Cross References — Application of this section for making of materially false statement in application for lifetime license, see § 49-7-153.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Evidence.

1. In general.

Code § 49-7-45 which prohibits killing of any animal unless it is in defense of person or property or during open season with a hunting license cannot reasonably be read or construed to mean that the legislature specifically provided that dogs shall be hunted during the open deer season and that the regulation adopted by the Mississippi Commission on Wildlife Conservation making it unlawful to use dogs for hunting deer is in conflict with an express legislative act. Strong v. Bostick, 420 So. 2d 1356 (Miss. 1982).

2. Evidence.

Evidence was insufficient to support a conviction for hunting deer during the closed season where there was no evidence of (a) the presence of the defendant at the scene, (b) a nexus between his gun and the slaughtered deer, and (c) a factual connection between the slaughtered deer, trails of blood leading from the defendant's truck, and blood and hair found in the bed of the truck. Hodnett v. State, 788 So. 2d 102 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR. Liability for injury to property inflicted by wild animal. 57 A.L.R.2d 242.

Right to kill game in defense of person or property. 93 A.L.R.2d 1366.

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-7-47. Restrictions on hunting or catching alligators.

(1) The commission may control, regulate and manage the taking of all alligators.

(2) Residents and nonresidents shall be required to purchase a combination hunting and fishing license to hunt, kill or catch any alligator for sporting purposes.

(3) Residents and nonresidents shall be required to obtain a special permit to hunt, kill, catch or possess any alligator for commercial purposes. The commission may establish a reasonable fee for an annual special sporting permit, not to exceed Two Hundred Dollars ($200.00), and may prescribe regulations governing commercial trade in alligators. Any reasonable fee established for an annual special commercial permit shall not exceed Five Hundred Dollars ($500.00). Such permit shall be good from the date of its issuance to June 30 following its date.

(4) Any person violating this section is guilty, upon conviction, of a Class I offense and is punishable as provided in Section 49-7-141.

SOURCES: Codes, 1942, § 5883.5; Laws, 1962, ch. 186, §§ 1-4; Laws, 1985, ch. 452, § 13; Laws, 1987, ch. 430; Laws, 1989, ch. 359, § 1; Laws, 2000, ch. 516, § 68; Laws, 2004, ch. 341, § 1; Laws, 2006, ch. 369, § 1, eff from and after July 1, 2006.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

§ 49-7-49. Prima facie evidence of hunting, trapping, or fishing.

For the purpose of this chapter, the fact that any person shall be found in the possession of a trap, fishing tackle, or other device of any description whatsoever used for the purpose of taking wild animals, wild birds or fish in the natural habitat of such animals, birds, or fish, or in the possession of dead bodies of wild birds, wild animals or fish within the field, in the forests or on the public highways or on the waters of this state, shall be prima facie evidence that such person is or has been hunting, trapping, or fishing.

SOURCES: Codes, 1942, § 5884; Laws, 1932, ch. 123.

Cross References — Penalties for conviction of Class II violation, see § 49-7-143.

JUDICIAL DECISIONS

1. In general.

Evidence was sufficient under this section to establish that the defendant was committing the misdemeanor of hunting without a license in the presence of a game warden where, though the defendant had no game and claimed that he was only hunting snakes, he had no license and was found carrying a shotgun in woods near where the game warden heard shotgun fire. ConAgra, Inc. v. Mills, 330 So. 2d 580 (Miss. 1976).

ATTORNEY GENERAL OPINIONS

Section 49-7-49 should not be used to replace subsection (1) of Section 97-15-13 during closed seasons on deer and turkey; Section 49-7-49 would apply to Section 97-15-13 in cases whereby suspect was in possession of dead bodies of wild birds or wild animals while on public highways, at which time it would be prima facie evidence that such person was hunting. Breland, June 9, 1993, A.G. Op. #93-0376.

RESEARCH REFERENCES

ALR. Validity and effect of making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation of law. 81 A.L.R.2d 1093.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 55.

CJS. 36A C.J.S., Fish § 49.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 19.

§ 49-7-51. Sale of game birds, animals or fish.

(1)(a) It is unlawful for any person to buy or sell or to offer for sale, exchange for merchandise, or other consideration, within this state, any game birds, game animals, or game fish, or parts thereof, named in this chapter, whether taken within or coming from without the state, except as specifically permitted by law or regulation.

(b) It is lawful for the following items to be bought and sold in accordance with the rules and regulations promulgated by the commission:

(i) The skins and sinew of deer and products crafted, fashioned or made from deer bones or antlers not in velvet;

(ii) Any part of a wild turkey, except the meat; and

(iii) Any parts of nuisance animals.

(c) Mounted game animals, birds and fish may not be sold, purchased or leased.

(d) A violation of this subsection is a Class I violation and is punishable as provided in Section 49-7-141.

(2) Any person who buys, sells, offers for sale, exchange for merchandise, or other consideration, any wild bird, wild animal or fish that has been taken illegally is guilty of a Class I violation and punished as provided in Section 49-7-141.

SOURCES: Codes, 1942, § 5885; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1948, ch. 255, § 7; Laws, 1983, ch. 323, § 1; Laws, 1985, ch. 452, § 3; Laws, 1995, ch. 339, § 1; Laws, 1999, ch. 562, § 1; Laws, 2002, ch. 427, § 1; Laws, 2006, ch. 370, § 1; Laws, 2007, ch. 479, § 1, eff from and after passage (approved Mar. 27, 2007.)

Cross References — Penalty for conviction, see § 49-7-141.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 36A C.J.S., Fish § 34.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13.

§ 49-7-53. Shipment and other transportation of game birds, animals or fish.

(1) It is unlawful for any railroad, express company or common carrier to knowingly receive for shipment or to ship any game animals, birds, or fish named in this chapter; except that a railroad, express company or common carrier may receive and carry game animals, birds or fish when accompanied by the hunter killing same and as provided otherwise in this chapter.

(2) No person or corporation may ship, transport or carry, cause to be shipped, transported or carried, or receive for shipment, transportation or carriage, or have in his possession with intent to ship, transport or carry, or secure the shipment, transportation or carriage beyond the limits of this state, any game animal, bird or fish, except for the following in accordance with rules and regulations promulgated by the commission:

(a) Rabbits;

(b) The furs or pelts of beaver, opossum, otter, raccoon or other fur-bearing animals during the open season and ten (10) days thereafter;

(c) Skins and sinew of deer and products crafted, fashioned or made from deer bones or antlers not in velvet;

(d) Game fish produced in a legally permitted aquaculture facility pursuant to Section 79-22-9;

(e) Any part of a wild turkey, except the meat; and

(f) The meat, hide or any other body parts of nuisance animals.

(3) The offering or reception by any person or corporation within this state of any such birds, animals or fish for shipment from this state shall be prima facie evidence that such birds, animals or game fish were killed, captured or taken within the state. Each game animal, bird or fish in possession, received for shipment or transportation, or shipped or transported in violation of this section is a separate offense.

(4) A nonresident licensee during the open season may ship, transport or carry from this state any game animal, bird or fish lawfully taken but not in excess of the bag and possession limits prescribed in Section 49-7-41.

Such nonresident licensee shall accompany the shipment or shall attach to such animals, birds or fish, or any package containing them, an affidavit in a form to be prescribed by the executive director that such animals, birds or fish were lawfully killed or taken by him and are being shipped or transported to his home and are not for sale. A duplicate of such affidavit shall be filed with the transportation company or agent thereof, whose duty it shall be to transmit the same to the executive director within ten (10) days after its receipt. Such affidavit shall be sworn to within ten (10) days after its receipt, and shall be sworn to before a person authorized to administer oaths in the state. For such purpose, conservation officers and agents of the transportation companies are hereby authorized to administer such oaths.

(5) A violation of this section is a Class I violation and is punishable as provided in Section 49-7-141.

SOURCES: Codes, 1942, § 5886; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1974, ch. 569, § 20; Laws, 1983, ch. 323, § 2; Laws, 1985, ch. 452, § 4; Laws, 1990, ch. 336, § 1; Laws, 1995, ch. 339, § 2; Laws, 1997, ch. 370, § 2; Laws, 2002, ch. 427, § 2; Laws, 2007, ch. 479, § 2, eff from and after passage (approved Mar. 27, 2007.)

Cross References — Penalty for unlawful shipping of quail or other game birds, see § 49-7-101.

Penalty for conviction, see § 49-7-141.

RESEARCH REFERENCES

ALR. Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 51.

CJS. 36A C.J.S., Fish § 38.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 11.

§ 49-7-54. Importation and translocation of white-tailed deer into state prohibited; exception for university research facilities; commission to establish regulations governing importation with emphasis on disease prevention; penalties.

(1) It is unlawful to import and translocate live white-tailed deer into this state, except that university research facilities may import live white-tailed deer upon prior approval of the commission. The commission shall establish regulations governing the importation of white-tailed deer with emphasis on preventing the introduction of diseases.

(2) A person who violates this section is guilty of a Class I violation and shall be punished as provided in Section 49-7-141.

SOURCES: Laws, 2002, ch. 377, § 1; Laws, 2003, ch. 516, § 6, eff from and after passage (approved Apr. 19, 2003.)

§ 49-7-55. Unlawful to possess, etc.

It shall be unlawful for any restaurant, hotel, club, or other public eating place to knowingly have in its possession, or to offer for sale to its patrons any game birds, game animals, or game fish enumerated in this chapter, whether taken within or coming from without the state, except that any such public eating place may prepare and serve game birds, game animals, or game fish to any persons who have legally killed or taken same.

SOURCES: Codes, 1942, § 5887; Laws, 1932, ch. 123.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 36A C.J.S., Fish § 34.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13.

§ 49-7-57. Possession of lawfully taken game animal, bird or fish; unlawful possession prohibited.

Any game animal, bird or fish lawfully taken may be possessed during the open season and during the closed season. Any game animal, bird or fish unlawfully taken may not be possessed at any time.

SOURCES: Codes, 1942, § 5892; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1944, ch. 234, § 6; Laws, 1946, ch. 402, § 1; Laws, 1996, ch. 481, § 1; Laws, 2005, ch. 389, § 1, eff from and after passage (approved Mar. 16, 2005.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

CJS. 36A C.J.S., Fish §§ 30-33.

38 C.J.S., Game ; Conservation and Preservation of Wildlife § 8.

§ 49-7-58. Temporary moratorium on importation of elk, red deer, mule deer, black-tailed deer and other cervids designated as susceptible to chronic wasting disease; penalties; authority of commission.

(1)(a) In addition to the ban on importing white-tailed deer under Section 49-7-54, there is hereby imposed a temporary moratorium on the importation of elk, red deer, mule deer, black-tailed deer and other cervids designated as susceptible to chronic wasting disease by the State Veterinarian and crosses of any such animals into the State of Mississippi. The moratorium on importing such animals shall end upon the adoption of chronic wasting disease regulations by the United States Department of Agriculture.

(b) Any person who possesses, buys, imports or transports any cervid that has been imported in the state in violation of the moratorium shall be subject to a Class I penalty under Section 49-7-141. Any person that imports any exotic animal into the state in violation of entry requirements or regulations of the Board of Animal Health or the Department of Wildlife shall be subject to a Class I penalty under Section 49-7-141. A second or subsequent violation under this section shall be punished by the maximum fine under Section 49-7-141. The agency issuing a permit for cervids or exotic animals within an enclosure shall revoke the permit of any person found in violation of the moratorium. If any cervid in an enclosure tests positive for chronic wasting disease or if any cervids within the enclosure have been imported from an area diagnosed with chronic wasting disease, then all cervids in the enclosure shall be deemed a threat to native wildlife and to public health and may be killed and disposed of by the state.

(2) It shall be the duty of the Commissioner of Agriculture and Commerce, the Board of Animal Health, the State Veterinarian, the Commission on Wildlife, Fisheries and Parks, and the Department of Wildlife, Fisheries and Parks to consult and coordinate efforts on matters related to chronic wasting disease, the prevention of the introduction of chronic wasting disease in the state and to ensure the health and safety of the public and wildlife.

(3) The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall have plenary authority in matters related to the importation of white-tailed deer, white-tailed deer in enclosures, and prevention of the introduction of chronic wasting disease into the native wildlife population.

SOURCES: Laws, 2003, ch. 516, § 2; Laws, 2007, ch. 516, § 2, eff from and after July 1, 2007.

Editor's Note — Laws of 2003, ch. 516, § 1, provides:

"SECTION 1. The Legislature finds Chronic Wasting Disease (CWD) is a transmissible spongiform encephalopathy currently known to infect free-ranging deer and elk in Colorado, Wyoming, Nebraska, New Mexico and Wisconsin. The disease has also infected farmed elk herds in South Dakota, Montana, Nebraska, Colorado, Kansas and Oklahoma. With the discovery of CWD in free-ranging deer on the east side of the Mississippi River and the transport of CWD-exposed elk to numerous states, CWD has become a national concern.

"Little is known about the biology and pathogenesis of CWD, including how the disease agent enters the animal, how it multiplies in the body, how it causes disease and how it is transmitted. These significant research and knowledge gaps regarding the fundamental characteristics of the disease greatly impede plans to control the disease. The only effective control has been the destruction of captive cervids and the depopulation of wild cervids in large geographical areas. Because of the urgency of the situation and the potential devastating effects on the native wildlife and recreational economies of the states, the United States Department of Agriculture had formed a task force to control and eradicate this disease. Preventing the introduction of the disease and enhancing early detection are a major emphases of the task force. Diagnostic testing, monitoring of enclosures, inspections of farmed cervids and sampling of cervid populations are critical components of the detection and prevention programs. In addition, many states have imposed emergency statewide moratoriums on the importation of cervids. There has been a proliferation of unregulated wildlife enclosures in Mississippi. Because of the potential devastating effect on native wildlife and the recreational economy dependent on wildlife, the urgency of the situation, and the need to ensure the health and safety of native wildlife and domestic animals, the Legislature finds that a temporary emergency moratorium and chronic wasting disease legislation is warranted and in the public interest."

§ 49-7-58.1. Regulation of enclosures preventing free egress of white-tailed deer.

(1) The owner of any enclosure containing white-tailed deer that prevents the free egress of white-tailed deer from the enclosed area shall notify and register with the Department of Wildlife, Fisheries and Parks. The person shall give his name, the location of the enclosure, the acreage within the enclosure, and whether any deer have been imported into the state and placed in the enclosure, and any other information required by the Commissioner on Wildlife, Fisheries and Parks.

(2) Persons who constructed an enclosure prior to July 1, 2003, shall have until January 1, 2004, to notify and provide the information required under this section. The person shall use acceptable hunting and wildlife management practices as may be determined by the department.

(3) The owner of such an enclosure shall comply with any testing of white-tailed deer harvested within the enclosure as may be required by the department. If chronic wasting disease is diagnosed within five (5) miles of the enclosure, the owner of such enclosure shall allow department personnel to enter the enclosure to utilize lethal collection methods to obtain tissue samples for testing. If chronic wasting disease is diagnosed within the enclosure, the owner shall allow department personnel to enter the enclosure and depopulate the white-tailed deer within the enclosure.

(4) A violation of this section is a Class I violation and is punishable as provided in Section 49-7-141.

SOURCES: Laws, 2003, ch. 516, § 7; Laws, 2007, ch. 516, § 3, eff from and after July 1, 2007.

§ 49-7-58.2. Program of inspecting, monitoring, testing and preventing chronic wasting disease.

(1) The Department of Wildlife, Fisheries and Parks shall develop and implement a program for inspecting, monitoring, testing and preventing chronic wasting disease. The Department of Wildlife, Fisheries and Parks is authorized to require the chronic wasting disease testing of white-tailed deer harvested within any enclosure. If chronic wasting disease is diagnosed in white-tailed deer within an enclosure, the department is authorized to enter the enclosure and depopulate the white-tailed deer within the enclosure. If chronic wasting disease is diagnosed within five (5) miles of the enclosure, the department is authorized to enter the enclosure and utilize lethal collection methods to obtain tissue samples.

(2) If a live test for chronic wasting disease is developed, the department is authorized to conduct such tests on white-tailed deer within any enclosure.

SOURCES: Laws, 2003, ch. 516, § 8, eff from and after passage (approved Apr. 19, 2003.)

§ 49-7-58.3. Regulation of hunting of nonnative cervids in noncommercial wildlife enclosures [Repealed effective July 1, 2014].

(1) The Commission may regulate the hunting of nonnative cervids in noncommercial wildlife enclosures, and the Department of Wildlife, Fisheries and Parks may enforce such regulations and laws in the same manner as commercial wildlife enclosures as provided in Section 49-11-25.

(2) A violation of this section is a Class I violation and punishable as provided in Section 49-7-141.

(3) This section shall repeal on July 1, 2014.

SOURCES: Laws, 2003, ch. 516, § 10; reenacted and amended, Laws, 2005, ch. 530, § 1; Laws, 2007, ch. 399, § 1; Laws, 2009, ch. 523, § 1; Laws, 2012, ch. 326, § 1; Laws, 2012, ch. 422, § 1, eff from and after passage (approved Apr. 18, 2012.)

Joint Legislative Committee Note — Section 1 of ch. 326, Laws of 2012, effective July 1, 2012 (approved April 13, 2012), amended this section. Section 1 of ch. 422, Laws of 2012, effective from and after passage (approved April 18, 2012), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Amendment Notes — The first 2012 amendment (ch. 326), extended the repealer provision in (2) from "July 1, 2012" to "July 1, 2014."

The second 2012 amendment (ch. 422), deleted "on Wildlife, Fisheries and Parks" following "The commission" at the beginning of (1); added (2); redesignated former (2) as (3); and extended the repealer provision from "July 1, 2012" to "July 1, 2014" at the end of (3).

§ 49-7-58.4. Regulation of commercial and noncommercial wild animal enclosures and facilities preventing free ingress and egress of native and nonnative cervids [Subsection (3) repealed effective July 1, 2014].

(1) The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall have plenary power to regulate all commercial and noncommercial wild animal enclosures in order to conserve and protect native wildlife for all citizens to enjoy and to protect our recreational economy dependent on native wildlife resources.

(2) The Commission on Wildlife, Fisheries and Parks shall regulate any facility that prevents the free ingress and egress of native or nonnative cervids as the same are defined by the commission. The commission may promulgate rules and regulations requiring the issuance of permits and the payment of a reasonable fee therefor. Regulations promulgated under this authority must have a majority vote of the commission to be adopted.

(3) This section shall repeal on July 1, 2014.

SOURCES: Laws, 2006, ch. 601, § 1; Laws, 2009, ch. 523, § 2; Laws, 2012, ch. 326, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision in (3) from "July 1, 2012" to "July 1, 2014."

§ 49-7-59. Hours for hunting.

(1) It is unlawful for any person to hunt any wild animal or wild bird during the night from one-half (½) hour after sunset to one-half (½) hour before sunrise, either with or without the use of a light, except:

(a) Beavers, bobcats, fox, opossums, nutria and raccoons; and

(b) Coyotes by a landowner, agricultural leaseholder or his designated agent on lands owned or leased by the owner or leaseholder.

(2) The commission shall prescribe the weapons that may be used to hunt game under this section.

(3) A violation of this section is a Class II violation and is punishable as provided in Section 49-7-143.

SOURCES: Codes, 1942, § 5893; Laws, 1932, ch. 123; Laws, 1968, ch. 260, § 1; Laws, 1980, ch. 516; Laws, 1985, ch. 452, § 14; Laws, 1996, ch. 486, § 4; Laws, 2005, ch. 373, § 3, eff from and after passage (approved Mar. 15, 2005.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 48, 49.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 8, 10.

§ 49-7-61. Hunting on Sabbath.

If any person shall hunt within one-fourth (¼) mile of any church on Sunday while worship services are being held, he shall, on conviction be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, 1857, ch. 64, art. 229; 1871, § 2683; 1880, § 2952; 1892, § 1294; 1906, § 1369; Hemingway's 1917, § 1105; 1930, § 1134; 1942, § 2371; Laws, 1983, ch. 356, eff from and after July 1, 1983.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

CJS. 36A C.J.S., Fish §§ 30-33.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-7-63. Use of traps, nets, etc., prohibited.

It shall be unlawful for any person at any time to capture wild fowl or game birds by the use of traps, nets or other contrivances, except as provided by this chapter.

SOURCES: Codes, 1942, § 5894; Laws, 1932, ch. 123.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 10.

§ 49-7-65. Unlawful to hunt, when.

Except as provided in this chapter, it is unlawful for any person to hunt, trap, take, kill, wound or capture, or attempt to hunt, trap, take, kill, wound or capture any fur-bearing animals except during the open season prescribed by law or regulation, or to have in his possession the green pelt of any such animal except during the open season and ten (10) days after the close of the open season. However, mink may be hunted with dogs during the season for taking of fur-bearing animals on payment of trapper's license fee by person so hunting mink with dogs.

SOURCES: Codes, 1942, § 5888; Laws, 1932, ch. 123; Laws, 1954, ch. 176, § 1; Laws, 2005, ch. 489, § 2, eff from and after July 1, 2005.

Cross References — Beginning of season when statutory date falls on Sunday, see § 49-7-35.

Hunting with bow and arrow, see § 49-7-37.

RESEARCH REFERENCES

ALR. Entrapment with respect to violation of fish and game laws. 75 A.L.R.2d 709.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 8, 9, 13.

§ 49-7-67. Unlawful to sell, when.

It shall be unlawful for any person to buy, sell or offer for sale the pelt of any fur-bearing animal knowing that the same has been unlawfully taken.

SOURCES: Codes, 1942, § 5889; Laws, 1932, ch. 123.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13.

§ 49-7-68. Unlawful to engage in computer-assisted remote hunting; penalties.

(1) For purposes of this section:

(a) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment or software to remotely control the aiming and discharge of archery equipment, firearms or primitive firearms to take any game animal or bird.

(b) "Facility for computer-assisted remote hunting" means the real property and improvements on the property to facilitate computer-assisted remote hunting.

(2)(a) It is unlawful for a person to engage in computer-assisted remote hunting.

(b) It is unlawful for a person to provide or operate a facility for computer-assisted remote hunting if the game animal or bird being hunted is located in this state.

(3) A person violating this section is guilty of a Class I offense and shall be punished as provided under Section 49-7-141. Each game animal or bird killed in the violation of this section is a separate offense.

SOURCES: Laws, 2006, ch. 418, § 1, eff from and after July 1, 2006.

§ 49-7-69. Use of explosives and chemicals prohibited.

It shall be unlawful for any person in the taking or killing of fur-bearing animals or fish to use poison, explosives or chemicals of any description.

SOURCES: Codes, 1942, § 5890; Laws, 1932, ch. 123.

Cross References — Penalties for taking fish by explosives or chemicals, see §§ 49-7-81, 49-7-83.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 36A C.J.S., Fish § 35.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 10.

§ 49-7-71. Unlawful to disturb traps.

It shall be unlawful for any person to disturb the traps of another or to take any fur-bearing animals from them unless specifically authorized by the owner and any person so doing shall be guilty of larceny, or trespass as the case may be, and punishable as provided by law.

SOURCES: Codes, 1942, § 5891, Laws, 1932, ch. 123.

§ 49-7-73. Unlawful to disturb nests or eggs.

It shall be unlawful to needlessly disturb or to destroy the nests of birds or their eggs. A violation of this section is a Class II violation and is punishable as provided in Section 49-7-143.

SOURCES: Codes, 1942, § 5895: Laws, 1932, ch. 123; Laws, 1985, ch. 452 § 15, eff from and after July 1, 1985.

Cross References — Issuance of permits for scientific purposes, see § 49-1-41.

Exclusion of nests or eggs of certain birds, see § 49-5-7.

Destruction of nests or eggs of birds on refuges, see § 49-5-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 31.

§ 49-7-75. Unlawful to fire woods, when.

It shall be unlawful during the nesting season of game birds for any person to set fire to the woods or fields other than on his own premises for the purpose of driving wild animals or birds out of fields or forests.

SOURCES: Codes, 1942, § 5896; Laws, 1932, ch. 123.

Cross References — Charging grand jury with respect to forest fire law, see § 13-5-47.

Prosecution for violation of laws for protection of birds, see § 49-5-45.

Penalties for conviction of Class II violation, see § 49-7-143.

Uncontrolled fire as a nuisance, see § 49-19-25.

§ 49-7-77. Game protected during high water or fire.

It shall be unlawful to hunt, trap, take, frighten, or kill game or fur-bearing animals forced out of their natural habitat by high water or fire until they have been permitted to return to such habitat by recession of such water, or the extinguishing of such fire.

All quail shall be protected from all hunting when the ground is covered by snow or when forced out of their natural habitat by high water or fire until they have been permitted to return to such habitat by the recession of such water or the extinguishing of such fire.

SOURCES: Codes, 1942, § 5898; Laws, 1932, ch. 123; Laws, 1936, ch. 221; Laws, 1964, ch. 232, eff from and after passage (approved June 11, 1964).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 48.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-7-78. Canned hunts prohibited.

For purposes of this section, the term "canned hunts" means the practice of providing a hunting opportunity under controlled conditions in which native game animals hunted may not have a reasonable opportunity to avoid the hunter. Canned hunts are prohibited in the state. The commission shall adopt regulations it deems necessary to prohibit and control such hunts. Nothing in this section shall prohibit the operation of private shooting preserves or commercial wildlife enclosures as authorized by statute.

SOURCES: Laws, 2002, ch. 360, § 1, eff from and after July 1, 2002.

§ 49-7-79. Unlawful to hunt on lands of others, when.

It shall be unlawful to hunt, shoot, or trap or otherwise trespass on the lands or leases of another after having been warned not to do so, whether in person or by posting of suitable notice in conspicuous places on such lands.

SOURCES: Codes, 1942, § 5899; Laws, 1932, ch. 123.

Cross References — Posting of refuges, see § 49-5-19.

Penalties for trespass upon lands of another, see §§ 97-17-85 et seq.

RESEARCH REFERENCES

ALR. Entry on private lands in pursuit of wounded game as criminal trespass. 41 A.L.R.4th 805.

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 16.

CJS. 38 C.J.S., Game § 3.

§ 49-7-80. Releasing aquatic species or animals not indigenous to Mississippi without permit.

No person shall stock, place, release or cause to be released into any of the public waters of the state any aquatic species without first obtaining a permit from the Mississippi Department of Wildlife, Fisheries and Parks. No person shall release or cause to be released within this state, any animal not indigenous to Mississippi without first obtaining a permit from the Mississippi Department of Wildlife, Fisheries and Parks. The department may issue or deny a permit after it completes a study of the species to determine any detrimental effect the species might have on the environment.

The department shall establish and maintain a list of approved, restricted and prohibited species and establish rules governing importation, possession, sale and escape of those species.

This section shall not prohibit the practice of catch and release of native fish species or the release of native fish bait species.

A person violating this section is guilty of Class I violation and, upon conviction, shall be punished as provided in Section 49-7-141.

SOURCES: Laws, 1998, ch. 360, § 1, eff from and after July 1, 1998.

§ 49-7-81. Unlawful methods of taking fish; exceptions; penalties.

(1) It is unlawful to take or kill game fish in any manner other than by hook and line with one or more hooks, or by use of a trot or troll line. Dip or landing nets may be used when landing a fish caught by hook and line, trot or troll lines. Shad and minnows may only be taken as bait with the aid of a dip or landing net, cast nets, boat-mounted scoops and wire baskets by residents for personal use in sportfishing. However, in private ponds or borrow pits or overflow ponds which go dry in summer and cut off from the regular streams, dip nets may be used for capturing or rescuing game fish. It is unlawful to kill or take fish of any species at any time or anywhere by mudding, or by the use of lime, poison, dynamite, India berries, weeds and walnuts, giant powder, gunpowder, or any other explosive, and no nongame gross fish shall be taken by the use of nets, seines or traps for personal use without a commercial fishing license. It is unlawful to set any freshwater commercial fishing equipment so that it extends more than halfway across the width of any stream, channel, drain or other body of water, and if commercial fishing equipment is placed in water, each piece of equipment shall be placed at least one hundred (100) yards apart. The commission shall have the authority to fix the minimum size mesh for use in barrel nets, hoop nets and seines for use in the freshwaters of this

state regulated by the Commission on Wildlife, Fisheries and Parks. This authority given the commission shall not be extended to the regulation of mesh size for use in marine waters. Notwithstanding anything in this or any other section to the contrary, any person in Mississippi fishing with barrel nets, hoop nets or seines in any waters of common boundary between Mississippi and another state may use a mesh size in such nets which is the same as the mesh size allowed in the other state, where the other state allows a mesh size in such nets which is smaller than the mesh size otherwise allowable in Mississippi.

(2) It is unlawful for any person to catch or destroy fish by the use of dynamite, gunpowder or other explosive substance.

(3) It is unlawful for any person to use a telephone, battery or any other electrically operated device for the purpose of killing or capturing fish.

(4) It is unlawful for any person to use any chemical of any kind in any stream or any lake where the public fishes for the purpose of killing or taking fish, except that this provision shall not be construed to apply to any owner of any fish pond using such chemical in his own private pond.

(5) It is unlawful for any person to poison any fish by mingling in the water any substance calculated and intended to stupefy or destroy fish.

(6) It is unlawful for any person to fish any equipment in the waters of the state of any size or type that is not allowed by the commission.

(7) Any hoop net, barrel net, seine, gill net, slat baskets, trammel net or untagged commercial fishing gear or devices being fished in public waters may be seized and held as evidence and shall be subject to forfeiture.

(8) Any person violating the provisions of subsections (2), (3), (4), (5) and (6) of this section is guilty of a Class I violation and, upon conviction, shall be punished as provided in Section 49-7-141.

SOURCES: Codes, 1871, § 2876; 1880, § 2935; 1892, §§ 1092, 1253;1906, §§ 1173, 1329; Hemingway's 1917, §§ 902, 1062; 1930, §§ 929, 1093; 1942, §§ 2158, 2326, 5900; Laws, 1886, p. 71; Laws, 1932, ch. 123; Laws, 1938, ch. 178; Laws, 1942, chs. 250, 254; Laws, 1948, ch. 255, § 8; Laws, 1952, ch. 189; Laws, 1980, ch. 362; Laws, 1985, ch. 452, § 5; Laws, 1988, ch. 381; Laws, 1998, ch. 409, § 2; Laws, 2003, ch. 402, § 1; Laws, 2008, ch. 471, § 1, eff from and after July 1, 2008.

Cross References — Game fish defined, see § 49-7-1.

Prohibition against use of explosives and chemicals in taking fish, see § 49-7-69.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 5900 cited argumentatively as indicating a legislative intent to require fishing licenses for fishing in privately owned ponds. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

Defendants held entitled to instruction that seining in a place cut off from other bodies of water and usually becoming dry in summer is not unlawful. Ray v. State, 159 Miss. 887, 132 So. 755 (1931).

The law does not authorize the seining

of lakes which constitute part of a watercourse and which run during a portion of the year unless the ponds usually go dry in dry seasons of the year, since the public are entitled to have the game fish protected where they move from place to place during the season when the stream is a running stream, but where an overflow lake or pond usually goes dry, the fish will be lost to the public and be destroyed. Ray v. State, 159 Miss. 887, 132 So. 755 (1931).

The state has the right to regulate the time, manner and extent of the taking of fish in running streams and lakes with outlets into other waters. Ex parte Fritz, 86 Miss. 210, 38 So. 722, 109 Am. St. R. 700 (1905).

RESEARCH REFERENCES

ALR. Applicability of state fishing license laws or other public regulations to fishing in private lake or pond. 15 A.L.R.2d 754.

Entrapment with respect to violation of fish and game laws. 75 A.L.R.2d 709.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 36A C.J.S., Fish § 35.

§ 49-7-83. Unlawful not to return to water game fish taken by net.

It shall be unlawful for any person to fail to return to the water, immediately, any game fish taken by net or seines or other contrivances used for the taking of fish not classified as game fish.

SOURCES: Codes, 1942, § 5902; Laws, 1932, ch. 123; Laws, 1938, ch. 178; Laws, 1942, ch. 250; Laws, 1948, ch. 255, § 10.

Cross References — Fish classified as game fish, see § 49-7-1.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 36A C.J.S., Fish § 35.

§ 49-7-85. Repealed.

Repealed by Laws of 1985, ch. 379, § 1, effective from and after March 21, 1985.

[Codes, 1942, § 5902,5; Laws, 1952, ch. 190, §§ 1-4; 1954; Laws, 1954, ch. 169; Laws, 1968, ch. 261, § 1]

Editor's Note — Former § 49-7-85 authorized the game and fish commission to issue rules and regulations for the taking of non-game gross fish in certain reservoirs and rivers.

§ 49-7-87. Fish, sale of, unlawful, when.

(1) It is unlawful for any person to sell, offer for sale or exchange any game fish enumerated in this chapter whether taken within or coming from without the state.

(2) The Department of Agriculture and Commerce may issue a permit to the owner of a private pond to sell fish grown or cultivated for stocking purposes only under such regulations as the Department of Agriculture and Commerce may deem necessary.

SOURCES: Codes, 1942, § 5903; Laws, 1932, ch. 123; Laws, 2002, ch. 372, § 1, eff from and after July 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the end of (2), as amended by Laws of 2002, ch. 372. The words "Department of Agriculture" were changed to "Department of Agriculture and Commerce." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Fish classified as game fish, see § 49-7-1.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 36A C.J.S., Fish § 34.

§ 49-7-89. Fish dealers not to possess.

It shall be unlawful for any fish dealer to buy, sell, or offer to buy or sell, or to knowingly have in possession any of the game fish enumerated in this chapter whether taken within or coming from without the state.

SOURCES: Codes, 1942, § 5905; Laws, 1932, ch. 123.

Cross References — Fish classified as game fish, see § 49-7-1.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 52.

CJS. 36A C.J.S., Fish § 34.

§ 49-7-90. Possession of paddlefish in violation of law or regulation; penalties; permits and fees.

(1) Any person who takes or possesses a paddlefish or parts thereof, whether coming from within or from outside the state, in violation of law or regulation is guilty of a Class I violation and may be punished as provided in Section 49-7-141, and upon conviction, shall forfeit all hunting, trapping and fishing privileges and paddlefish permits for a period of not less than one (1) year from the date of conviction. A violator shall pay a reinstatement fee of Five Hundred Dollars ($500.00) to have his or her privileges restored.

(2) The commission may promulgate rules and regulations, establish and issue permits and establish and collect fees for permits for the harvest and sale of paddlefish and paddlefish parts.

(3) Any person engaged in selling or peddling nonnative fish taken from public waters must possess a commercial fishing license.

(4) Any person required to purchase a commercial fishing license must report his catch and/or other activities as required by regulation of the commission.

SOURCES: Laws, 2001, ch. 499, § 1; Laws, 2004, ch. 340, § 1; Laws, 2008, ch. 526, § 1; Laws, 2010, ch. 336, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment inserted "and" following "establish" in (2); and deleted (5), which was a repealer for the section.

§ 49-7-91. Unlawful to fish commercially in Muddy Bayou.

(1) It is unlawful for any person, firm, or corporation to fish commercially at any time in Muddy Bayou, in Warren County, Mississippi.

(2) The department may enforce this section and seize and confiscate all commercial nets and seines used in Muddy Bayou, in Warren County, Mississippi, or on any part of the bayou, either along the length or at its two (2) openings in and to Eagle Lake and Steele Bayou.

(3) Any person violating this section is guilty of a misdemeanor and shall be fined not less than Ten Dollars ($10.00), nor more than One Hundred Dollars ($100.00), or be imprisoned not more than three (3) months, or both; and in addition the department shall seize and confiscate all commercial nets and seines used for such purpose, and dispose of the same at private sale and place the proceeds to the credit of the State Game and Fish Fund.

SOURCES: Codes, 1942, § 5903-01; Laws, 1946, ch. 333, §§ 1-4; Laws, 2000, ch. 516, § 69, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 49-1-1 provides that the term "State Game and Fish Commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 56.

CJS. 36A C.J.S., Fish §§ 45, 46.

§ 49-7-93. Killing deer or spotted fawn out of season; penalties.

Any person convicted of intentionally killing any deer or spotted fawn out of season shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00); and the commission shall have authority to revoke a license for a period of one (1) year.

SOURCES: Codes, 1942, § 5866-01; Laws, 1956, ch. 149, § 2; Laws, 1993, ch. 479, § 1, eff from and after July 1, 1993.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 54.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-7-95. Killing deer by headlighting or other lighting devices; killing livestock; harassment of wildlife; penalties.

(1)(a) Any person who hunts or takes or kills any deer at night by headlighting, by any lighting device or light amplifying device shall, upon conviction thereof, be guilty of a Class I violation and shall be punished as provided in Section 49-7-141.

(b) For any person to be charged with a violation of this subsection, that person must have been observed committing an overt act consistent with the hunting of deer at night with the aid of a light, lighting device or light amplifying device. Such observation of an overt act may include, but shall not be limited to, witnessing the discharge of a weapon capable of killing a deer, hearing the report of a firearm being fired, seeing the person in possession of a recently killed deer which could not have been killed during legal hunting hours, or witnessing the person committing any acts consistent with headlighting deer in violation of this subsection.

(2)(a) Violators of subsection (1), twenty-one (21) years old or older, upon conviction, shall also forfeit all hunting, trapping and fishing privileges for a period of not less than three (3) consecutive years from the date of conviction and shall attend such courses prescribed by the commission. A violator shall pay a reinstatement fee of Five Hundred Dollars ($500.00) to have his privileges restored.

(b) A person twenty-one (21) years old, or older, convicted of a first violation of subsection (1) may petition the commission to have his privileges restored after one (1) year from the date of his conviction. The commission may prescribe conditions on the restoration of privileges for a first-time offender, and the first-time offender shall pay a reinstatement fee of Five Hundred Dollars ($500.00).

(c) A violator of subsection (1) under the age of twenty-one (21), upon conviction, shall forfeit all hunting, trapping and fishing privileges for one (1) year from the date of conviction, and shall attend courses prescribed by the commission. A violator under the age of twenty-one (21) may petition the commission to have his privileges restored after he has paid his penalty. The violator shall pay a reinstatement fee of Two Hundred Fifty Dollars ($250.00) to have his privileges restored.

(d) A person under the age of twenty-one (21) convicted of a second or subsequent violation of subsection (1) shall forfeit all hunting, trapping and fishing privileges for a period of not less than three (3) consecutive years from the date of conviction and shall attend courses prescribed by the commission. The person shall pay a reinstatement fee of Five Hundred Dollars ($500.00) to have his privileges restored.

(e) A person who is appealing from a violation of subsection (1) shall have his hunting privileges suspended or revoked as provided in Section 49-7-27.

(3) This section shall not apply to any deer killed in an accident with any motor vehicle.

(4) Anyone found guilty of violating this section who shoots or kills any livestock shall be punished as provided in Section 97-41-15, in addition to the penalties provided in this section.

(5) It shall be unlawful for a person to shine a light from a public road or right-of-way, or on the property of another, at night, from one-half (½) hour after sunset to one-half (½) hour before sunrise. This section shall not apply: (a) to the normal use of headlights of a vehicle traveling on a public road or right-of-way; (b) to law enforcement, emergency or utility personnel in the performance of their official duties; (c) to landowners, agricultural or hunting leaseholders or their designated agents with written authorization from the landowner or agricultural leaseholder, and upon lands owned or leased by the landowner, leaseholder or agent; (d) to persons lawfully hunting, fishing or trapping; or (e) a landowner, agricultural leaseholder or a designated agent in the act of searching for or retrieving escaped livestock or pets. Any person convicted under this provision shall be guilty of harassment of wildlife and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than sixty (60) days nor more than six (6) months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 5866-02; Laws, 1956, ch. 149, § 3; Laws, 1971, ch. 314, § 1; Laws, 1972, ch. 430, § 1; Laws, 1980, ch. 556; Laws, 1985, ch. 452, § 6; Laws, 1991, ch. 365, § 1; Laws, 1998, ch. 589, § 1; Laws, 2001, ch. 354, § 2; Laws, 2005, ch. 522, § 2; Laws, 2007, ch. 531, § 1, eff from and after July 1, 2007.

Cross References — Revocation and suspension of license and privileges for person appealing from a violation of § 49-7-95, see § 49-7-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Entrapment.

1. In general.

In a prosecution for "headlighting" deer, the evidence was sufficient to establish venue, even though there was insufficient evidence to establish venue in the State's case-in-chief, where rebuttal testimony by the State sufficiently proved venue, and there was no surrebuttal by the defendant to the contrary. Smith v. State, 646 So. 2d 538 (Miss. 1994).

Hunting deer at night with the aid of any lighting device is a punishable offense. Merritt v. State, 497 So. 2d 811 (Miss. 1986).

Member of poaching party which is observed shining light from one side of road to other, scanning fields and woods, and which, upon detention by conservation officer, is found to be in possession of 2 recently killed deer, may be convicted of 3 separate counts of headlighting deer. Pharr v. State, 465 So. 2d 294 (Miss. 1984).

Sentence of 30 days in county jail upon conviction of 3 counts of headlighting is in excess of that authorized by § 49-7-95 if sentencing judge intends 30 days confinement on each count, but is lawful if sentencing judge makes it clear that 10 day sentence is being imposed on each conviction with sentences to run consecutively, yielding aggregate 30 day sentence. Pharr v. State, 465 So. 2d 294 (Miss. 1984).

Evidence that defendant was one of 4 persons observed in slow moving pickup truck from which spotlight was shined over fields on both sides of road and in which 2 freshly killed deer were discovered is sufficient basis upon which jury may reject defendant's claim that persons in pickup were lost, ran upon pickup occupied by strangers and purchased deer from strangers, and convict defendant of unlawful headlighting. Pharr v. State, 465 So. 2d 294 (Miss. 1984).

A conviction under this section [Code 1942, § 5866-02] is warranted by evidence that defendants were driving an automobile slowly at night on a sparsely traveled highway in an area inhabited by deer, with a spotlight on each side of the car and a shotgun loaded with buckshot in the front seat. Musgrove v. State, 236 Miss. 513, 110 So. 2d 919 (1959).

2. Entrapment.

In a case in which a hunter had been charged with headlighting deer in violation of Miss. Code Ann. § 49-7-95, and the charges were dropped, a district court's dismissal of the hunter's 42 U.S.C.S. § 1983 case against a Mississippi department of wildlife, fisheries, and parks employee on the basis that the hunter was entrapped by the employee was affirmed because the employee was entitled to qualified immunity; to the extent that there was entrapment by the employee's pressure and assistance in helping the hunter to violate the state statute, there was no constitutional violation. Stokes v. Gann, 498 F.3d 483 (5th Cir. 2007).

ATTORNEY GENERAL OPINIONS

A justice court judge may not suspend the minimum monetary fine imposed for a head lighting deer violation; however, a circuit or county court judge may suspend such fine if the charge is brought in circuit or county court. Moffett, Sept. 27, 2002, A.G. Op. #02-0567.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 54.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-7-96. Deer management zones; antler restrictions.

(1)(a) The Commission on Wildlife, Fisheries and Parks may establish deer management zones within the state.

(b) The commission may establish antler restrictions within the zones for the proper management of antlered deer.

(2) The antler restrictions in Sections 49-7-31 and 49-7-41 shall not apply to those zones with antler restrictions established by the commission.

(3) If the commission establishes deer management zones or establishes antler restrictions, the department shall study and analyze all relevant data

and shall file annual progress reports with the Legislature. The department shall file a final report on the effectiveness of the program with recommendations on the continuation of such restrictions.

SOURCES: Laws, 2007, ch. 600, § 1; Laws, 2010, ch. 365, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted (4), which read: "This section shall repeal on July 1, 2010."

§ 49-7-97. Liability of public officer for failure to perform duty.

Any public officer who wilfully fails to perform any duty imposed by law or by any lawful rule or regulation of the commission, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned not more than six (6) months, or both.

SOURCES: Codes, 1942, § 5866-03; Laws, 1956, ch. 149, § 4; Laws, 1994, ch. 408, § 5, eff from and after July 1, 1994.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Officers and Employees §§ 366 et seq.

CJS. 67 C.J.S., Officers §§ 157 et seq.

§ 49-7-99. Repealed.

Repealed by Laws of 1998, ch. 409, § 3, eff from and after passage (approved March 24, 1998).

[Codes, 1942, § 5903.5; Laws, 1964, ch. 340, §§ 1-3; Laws, 1971, ch. 316, § 1, eff from and after passage (approved February 8, 1971)]

Editor's Note — Former Section 49-7-99 related to penalties for possession of illegal nets, and to confiscation and destruction of illegal equipment.

§ 49-7-101. General fines and penalties.

(1) Unless a different or other penalty or punishment is specially prescribed, a person who violates any of the provisions of this chapter or any law or regulation for the protection of wild animals, birds, or fish, or who fails to perform any duty imposed by such laws or regulations, or who violates or fails to comply with any lawful order, rule or regulation adopted by the commission is guilty of a Class III violation and, upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One

Hundred Dollars ($100.00). In addition thereto, such person is liable, in the discretion of the court, to an additional penalty of Twenty-five Dollars ($25.00) for each animal, bird, or fish, or part thereof, or each nest or egg of any bird taken, possessed, or transported in violation of such law or regulation.

(2) Any person unlawfully killing a doe deer is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(3) Any person killing a wild turkey hen, except when permitted by the commission is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(4) Any person killing any turkey out of season, and any person baiting turkeys is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(5) Any person unlawfully trapping quail or any other game bird within this state is guilty of a Class II violation and shall be punished as provided in Section 49-7-143.

(6) Any person transporting, shipping, or carrying quail or any other game bird within, or from within to a point without this state, without first having secured permission from the executive director to so do, shall, except as otherwise provided by Section 49-1-1 et seq., be fined not less than One Hundred Dollars ($100.00).

SOURCES: Codes, 1942, § 5866; Laws, 1932, ch. 123; Laws, 1936, ch. 197; Laws, 1942, ch. 250; Laws, 1948, ch. 255, § 4; Laws, 1956, ch. 149, § 1; Laws, 1962, ch. 187; Laws, 1971, ch. 313, § 1; Laws, 1985, ch. 452, § 18; Laws, 2000, ch. 516, § 70, eff from and after passage (approved Apr. 30, 2000.)

Cross References — As to the authority of the commission to promulgate rules and regulations, see § 49-1-29.

Maintaining court records and abstracts of game and fish law violations, see § 49-4-22.

Disposition of fines and penalties, see § 49-5-51.

Penalty for violating rules for hunting with bow and arrow, see § 49-7-37.

Use of quail for training hunting dogs, see § 49-7-42.

Penalty for violating rules for national forest lands within the state, see § 49-7-43.

Unlawful shipment of game, see § 49-7-53.

Unlawful manner of taking fish, see § 49-7-81.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An admission of guilt made by a defendant spontaneously and before arresting game wardens had an opportunity to advise him of his constitutional rights was admissible against him when tried on the charge of possessing undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

Game wardens who had observed the defendant catch catfish smaller than the legal minimum by means of illegal traps in a public lake and subsequently transport them by boat to a point where he loaded them on a pickup truck were lawfully entitled to arrest the defendant and search his truck, and their evidence was admissible in court. Russell v. State, 220

So. 2d 334 (Miss. 1969).

The fact that a defendant who admitted that he was catching fish "trying to make a living" had not paid the commercial fisherman's privilege license required by Code 1942, § 5609 was no defense to a charge of possession of undersized catfish. Russell v. State, 220 So. 2d 334 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 42 et seq.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-7-102. Repealed.

Repealed by Laws of 1990, ch. 329, § 10, eff from and after October 1, 1990.

[En, Laws, 1976, ch. 383, § 1]

Editor's Note — Former § 49-7-102 provided for a penalty assessment for support of hunter education and training programs.

§ 49-7-103. Seizure and confiscation of property used in illegal hunting or fishing, etc., as contraband.

The following property is subject to forfeiture: any firearm, equipment, appliance, conveyance or other property used directly or indirectly in the hunting or catching or capturing or killing of deer at night with any headlight, lighting device or light amplifying device, or in fishing for, or killing or capturing fish by using a telephone, magneto, battery, or any other electrically operated device including but not limited to any all-terrain vehicle, trailer, boat, outboard motor, airplane, net, light, battery, magneto, wires, telephone device, or any other device or contrivance or other vehicle, or which may be used in the transportation of any dead or live deer taken, captured, or killed at night with or by means of a headlight, lighting device or light amplifying device, or any dead or live fish killed, stunned, captured, or taken by using a telephone, battery, magneto, or any other electrically operated device. No motor vehicle that is of the type required to be titled under the Mississippi Motor Vehicle Title Law is subject to forfeiture. Property subject to forfeiture shall be seized by any employee of the department or other officer of the law including any sheriff or deputy sheriff. Upon the seizure of such property proceedings shall be instituted pursuant to Sections 49-7-251 through 49-7-257.

SOURCES: Codes, 1942, § 5866-04; Laws, 1956, ch. 149, § 5; Laws, 1989, ch. 468, § 5; Laws, 1995, ch. 551, § 1; Laws, 1998, ch. 589, § 2, eff from and after passage (approved April 17, 1998).

Cross References — Prohibition against law enforcement officers' acquiring confiscated property, see § 25-1-51.

Procedure for forfeiture of property seized for violation of fish and game laws, see §§ 49-7-251 et seq.

Administrative forfeiture procedures for certain property, see § 49-7-257.

JUDICIAL DECISIONS

1. In general.

The 1995 amendment to the statute, which precluded the forfeiture of motor vehicle, applied to all pending cases. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

The statute must be construed to require law enforcement agents to have probable cause to believe that the subject property has been used, directly or indirectly, to accomplish the various violations that are enumerated. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

The statute authorized the forfeiture of a boat, a trailer, and a motor vehicle where they were directly and indirectly used to obtain fish through shocking and to transport the contraband fish and illegal equipment away from the river where the illegal activity occurred; the fish were found in the boat, which was towed on the trailer attached to the motor vehicle, in which the shocking device was found. One 1992 Toyota 4-Runner v. State ex rel. Miss. Dep't of Wildlife Fisheries & Parks, 721 So. 2d 609 (Miss. 1998).

Code 1942, § 5866-04 and former Code 1942, §§ 5866-05 and 5866-06 [§§ 49-7-103, 49-7-105 and 49-7-107] are fatally defective and unconstitutional as to an owner out of possession and innocent of knowledge of the illegal purpose for which the firearms and other equipment is used, in that they provide for no notice, actual or constructive, to be given to such an owner. Kellogg v. Strickland, 191 So. 2d 536 (Miss. 1966).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 56.

CJS. 36A C.J.S., Fish §§ 45, 46.

38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 16-18.

§§ 49-7-105 through 49-7-131. Repealed.

Repealed by Laws of 1989, ch. 468, § 6, eff from and after March 28, 1989.

§ 49-7-105. [Codes, 1942, § 5866-05; Laws, 1956, ch. 149, § 6; Laws, 1964, ch. 228, § 1; Am Laws, 1981, ch. 471, § 50; Laws, 1982, ch. 423, § 28]

§ 49-7-107 through § 49-7-131. [Codes, 1942, §§ 5866-06 through 5866-18; Laws, 1956, ch. 149, §§ 7-19]

Editor's Note — Former § 49-7-105 contained procedures for filing a claim to recover seized property.

Former §§ 49-7-107 through 49-7-131 related to the seizure and disposition of property.

Provisions for forfeiture of property for violation of fish and game laws now appear in §§ 49-7-251 et seq.

§ 49-7-133. Reciprocity agreement recognizing hunting and fishing licenses issued by participating states.

The commission may negotiate with the Louisiana Conservation Commission and the Arkansas Game and Fish Commission to effectuate a reciprocity agreement with one or both of these commissions providing that the hunting and fishing licenses and the rules and regulations governing hunting and fishing shall be acceptable and recognized by the game and fish commissions or the conservation commission of each of the states participating in the reciprocity agreement, when hunters or fishermen hold a current license issued by the state game and fish commissions or the conservation commission of the state in which he is domiciled, when fishing in the Mississippi River or in bodies of water between the Mississippi River and the levee nearest the river, in places where there is a levee; and in the Mississippi River or in lakes formed by the Mississippi River, or in old Mississippi River runs in places where there is no levee; and when hunting waterfowl and other migratory species in the Mississippi River, or between the Mississippi River and the levee nearest the Mississippi River, or in the Mississippi River or in lakes formed by the Mississippi River, or in old Mississippi River runs in places where there is no levee.

For all counties lying wholly or partially within the Mississippi levee district, and bordering upon the Mississippi River, and having a population of more than five thousand (5,000) according to the 1950 census, the commission is authorized to effectuate a reciprocity agreement, with the Game and Fish Commissions of Arkansas and Louisiana, and/or with the Game and Fish Commissions of the Counties of Desha and Chicot in the State of Arkansas, which shall permit hunting waterfowl and other migratory species, deer, squirrels, turkeys, quail and rabbits in the Mississippi River, or between the Mississippi River and the levee nearest the Mississippi River, or in the Mississippi River or in lakes formed by the Mississippi River, or in old Mississippi River runs and in places where there is no levee.

SOURCES: Codes, 1942, § 5911.5; Laws, 1948, ch. 253; Laws, 1954, ch. 173, §§ 1, 2; Laws, 2000, ch. 516, § 71, eff from and after passage (approved Apr. 30, 2000.)

Comparable Laws from other States — Louisiana: La.R.S. 56:104.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 33.

CJS. 36A C.J.S., Fish § 10.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 4.

§ 49-7-135. Compact concerning Pearl River authorized.

The executive director may proceed immediately to negotiate with the Game and Fish Commission of the State of Louisiana to effectuate a reciprocity agreement with such commission providing that the current hunting and fishing licenses issued to hunters or fishermen of the respective states shall be accepted and recognized by the game and fish commissions of each of the states for the purpose of hunting for migratory water fowl or fishing by the hunters or fishermen of either state in the Pearl River between top bank and top bank along the course where the Pearl River forms a boundary line between the State of Louisiana and the State of Mississippi.

SOURCES: Codes, 1942, § 5912; Laws, 1942, chs. 248, 249; Laws, 1952, ch. 187, § 2; Laws, 2000, ch. 516, § 72, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 33.

CJS. 36A C.J.S., Fish § 10.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 4.

§ 49-7-137. Lease of certain state lands for hunting, fishing and conservation purposes.

(1) The Department of Finance and Administration may lease for hunting, fishing and conservation purposes to the Quitman County Conservation League, Incorporated, a nonprofit domestic corporation, all wood lands owned by the State of Mississippi in Quitman County, Mississippi, and being a part of Camp "B" at the O'Keefe Farm of the Mississippi State Penitentiary.

(2) Any such lease shall be for a period and term of not more than one (1) year, but the same may continue from year to year until terminated by one (1) of the parties thereto.

(3) Any such lease shall be upon such terms and conditions as may be imposed by the Department of Finance and Administration and the Board of Commissioners of the Mississippi State Penitentiary and the same shall have no force and effect until approved in writing by said board of commissioners and may be terminated at the pleasure of the board of commissioners, or the Department of Finance and Administration.

(4) Such lease shall provide that the use of such wood lands by the Quitman County Conservation League, Incorporated, shall be under the supervision of the commission. Any lease on this land shall provide that any citizen of this state shall be entitled to hunt and fish on these lands providing they shall comply with all laws and regulations pertaining to fishing and hunting and provided such person meets the membership qualifications and pays the membership fee in the amount of Three Dollars ($3.00) as set by the Quitman County Conservation League.

SOURCES: Codes, 1942, § 5923.5; Laws, 1959, Ex Sess., ch. 26; Laws, 2000, ch. 516, § 73, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Power of Secretary of State to rent or lease state lands, see § 29-1-107.

§ 49-7-139. Seafoods excluded.

This chapter shall in no way abridge, affect or repeal any of the statutes, laws, or acts relating to or having reference to seafoods, oysters, saltwater fish, saltwater shrimp, diamond back terrapin, sea turtle, crabs or any other species of marine or saltwater animal life existing or living in the waters within the territorial jurisdiction of the State of Mississippi as set out in and covered by Chapter 15 of Title 49 of the Mississippi Code of 1972. None of the duties conferred on the Mississippi Commission on Marine Resources under Chapter 15 of Title 49 shall be conferred upon or exercised in any way by the Mississippi Commission on Wildlife, Fisheries and Parks.

SOURCES: Codes, 1942, § 5907; Laws, 1932, ch. 123; Laws, 1994, ch. 578, § 58, eff from and after July 1, 1994.

§ 49-7-140. Importation and release of wild hogs; prohibition; penalties.

(1) No person may import into the state or release into the wild, any live feral hog, wild swine or Russian Boar.

(2) No person may transport or relocate within the state any live feral hog, wild swine or Russian Boar and release the hog into the wild.

(3) For the purposes of this section, "feral hogs, wild swine or Russian Boar" are defined as any hog that is not a domesticated pet or livestock; and "released into the wild" is defined as being able to move about freely to adjoining land.

(4) A violation of this section is a Class I violation punishable as provided in Section 49-7-141.

SOURCES: Laws, 1994, ch. 412, § 1; Laws, 2005, ch. 384, § 1; Laws, 2010, ch. 521, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote (2); and in (4), deleted "subsection (1) of" preceding "this section," and deleted the last sentence, which read: "A violation of subsection (2) of this section is a Class III violation punishable as provided in Section 49-7-101."

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals § 15.

§ 49-7-141. Penalties; Class I violations.

(1) Any person who has been convicted of a Class I violation shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and shall be imprisoned in the county jail for five (5) days. The person shall also forfeit all hunting, trapping and fishing privileges for a period of not less than twelve (12) consecutive months from the date of conviction.

(2) In addition to the penalty provided in subsection (1) of this section, any person convicted of a violation of Section 49-7-51 or 49-7-53, Mississippi Code of 1972, may, in the discretion of the court, be fined One Hundred Dollars ($100.00) for each game animal, game bird or game fish, or part thereof,

bought, sold, offered for sale, exchanged for merchandise or other consideration, received for shipment, shipped, transported, carried or possessed with the intent to ship, transport or carry.

SOURCES: Laws, 1985, ch. 452, § 1; Laws, 1989, ch. 359, § 2; Laws, 1995, ch. 551, § 5, eff from and after July 1, 1995.

Cross References — Maintaining court records and abstracts of game and fish law violations, see § 49-4-22.

Fishing licenses, see § 49-7-9.

Unlawful hunting of alligators and alligator turtles, see § 49-7-47.

Unlawful sale of game birds and animals, see § 49-7-51.

Unlawful shipments of game birds and animals, see § 49-7-53.

Releasing aquatic species or animals not indigenous to Mississippi without permit, see § 49-7-80.

Unlawful methods of taking fish, see § 49-7-81.

Taking deer by headlighting, see § 49-7-95.

General fines and penalties, see § 49-7-101.

Penalties for conviction of Class II violation, see § 49-7-143.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

ALR. Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

Entrapment with respect to violation of fish and game laws. 75 A.L.R.2d 709.

Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation. 81 A.L.R.2d 1093.

Am Jur. 35 Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54, 56.

CJS. 36A C.J.S., Fish § 42.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-7-143. Penalties; Class II violations.

Any person who has been convicted of a Class II violation shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than sixty (60) days nor more than six (6) months, or by both such fine and imprisonment.

SOURCES: Laws, 1985, ch. 452, § 7; Laws, 1989, ch. 359, § 3, eff from and after July 1, 1989.

Cross References — Prohibition of political activity by employee of commission, see § 49-1-19.

Maintaining court records and abstracts of game and fish law violations, see § 49-4-22.

Failure to prepare license certificate in proper form, see § 49-7-21.

Prohibition on use of dogs for hunting deer during special hunting seasons, see § 49-7-37.

Taking of game without license and other related violations, see § 49-7-45.

Unlawful hunting of alligators and alligator turtles, see § 49-7-47.

Possession of fishing tackle or hunting or trapping devices as prima facie evidence of fishing, trapping or hunting, see § 49-7-49.

Hours for hunting, see § 49-7-59.

Unlawful disturbance of nests or eggs of birds, see § 49-7-73.

Unlawful methods of taking fish, see § 49-7-81.

General fines and penalties, see § 49-7-101.

Interference with lawful taking of wildlife, see § 49-7-147.

Violations on private shooting preserves, see § 49-11-27.

Shooting across street or highway or at traffic control device, see § 97-15-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

ALR. Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

Entrapment with respect to violation of fish and game laws. 75 A.L.R.2d 709.

Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation. 81 A.L.R.2d 1093.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54, 56.

CJS. 36A C.J.S., Fish § 42.

38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-7-145. Repealed.

Repealed by Laws of 1994, ch. 578, § 65, eff from and after July 1, 1994. [Laws, 1991, ch. 572, § 1; Laws, 1991, ch. 580, § 1]

Editor's Note — Former § 49-7-145 was entitled: Commercial fishing activity prohibited in certain waters; study of estuaries and bays authorized; penalties. For similar provisions, see § 49-15-315.

§ 49-7-147. Interference with lawful taking of wildlife.

(1) No person shall intentionally:

(a) Interfere with or attempt to prevent the lawful taking of wildlife by another;

(b) Attempt to disturb wildlife, or attempt to affect their behavior with the intent to prevent their lawful taking by another; or

(c) Harass another person who is engaged in the lawful taking of wildlife or in the preparation for such taking.

(2) Any person who violates subsection (1) is guilty of a Class II violation, punishable as provided in Section 49-7-143, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 554 § 1, eff from and after passage (approved April 12, 1991).

§ 49-7-148. Access for hunters with disabilities; use of mobility related device.

(1)(a) The department shall provide hunters with disabilities access to hunting areas in public wildlife management areas under its jurisdiction.

(b) The department shall allow the use of a mobility related device for an individual who is permanently physically disabled and meets one or more of the following criteria:

(i) Is paraplegic or hemiplegic;

(ii) Is unable to ambulate and requires a wheelchair, walker, leg braces, prosthesis, canes or crutches for mobility.

(2) The commission shall promulgate rules and regulations for reasonable access and include a definition of "hunters with disabilities" as used in this section.

SOURCES: Laws, 1997, ch. 481, § 1; Laws, 2010, ch. 413, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§§ 49-7-149 and 49-7-150. Repealed.

Repealed by Laws of 1994, ch. 578, § 65, eff from and after July 1, 1994.
§ 49-7-149. [Laws, 1992, ch. 357, § 1]
§ 49-7-150. [Laws, 1992, ch. 357, § 2]

Editor's Note — Former § 49-7-149 was entitled: Filleting of fish caught by fishermen on charter or recreational fishing boat in Gulf of Mexico over 24 hours before returning to land. For similar provisions, see § 49-15-317.

Former § 49-7-150 was entitled: Charter or recreational fishing boat which will be in Gulf of Mexico over 24 hours to file float plan. For similar provisions, see § 49-15-319.

LIFETIME SPORTSMAN LICENSE

SEC.
49-7-151. Creation of lifetime sportsman license and Mississippi Wildlife Endowment Fund.
49-7-153. Lifetime sportsman and lifetime fishing licenses.
49-7-155. Wildlife Endowment Fund.

§ 49-7-151. Creation of lifetime sportsman license and Mississippi Wildlife Endowment Fund.

Recognizing the inestimable importance to the state and its citizens of conserving the wildlife resources of Mississippi and recognizing the desires of many citizens who wish to make a lifetime contribution to preserve our rich legacy of wildlife resources for future generations, it is the intention of the Legislature to create a lifetime sportsman license and the Mississippi Wildlife Endowment Fund.

SOURCES: Laws, 1988, ch. 545, § 1, eff from and after July 1, 1988.

§ 49-7-153. Lifetime sportsman and lifetime fishing licenses.

(1) Any resident may purchase a lifetime sportsman hunting and fishing license by filing an application in the office of the department. The license shall qualify the licensee to take all fish, game and fowl, except waterfowl, including deer and turkey, in the manner provided by law. The license shall also permit the licensee to hunt with primitive weapons and bow and arrow, and to fish in the public waters of the state, including the taking of crabs, oysters, shrimp and any saltwater fish authorized to be taken under a recreational license.

(2) The department may issue a resident lifetime sportsman license at a fee to be determined by the commission at an amount not less than One Thousand Dollars ($1,000.00) for a person thirteen (13) years of age or older and not less than Five Hundred Dollars ($500.00) for a person under thirteen (13) years of age. All lifetime licenses shall be issued from the office of the department. Each application for a lifetime license must be accompanied by a certified copy of the birth certificate of the individual to be named as the license holder, if the individual is twelve (12) years of age or under.

(3) The commission shall establish proof of residency requirements for the purchase of a lifetime license, and shall also establish such restrictions on and regulations for lifetime licenses as it deems necessary and proper. An applicant for a resident lifetime license must have been domiciled in this state for eighteen (18) consecutive months immediately preceding the date of his application for a license. The burden of proving domicile shall be on the applicant.

(4) The department may issue a native son or daughter nonresident lifetime sportsman hunting and fishing license. The commission shall establish the fee, but the fee shall not be less than One Thousand Five Hundred Dollars ($1,500.00). The applicant must provide a certified copy of the original birth certificate showing that the applicant was born in Mississippi and/or if the parents' address was in Mississippi at the time of birth as shown on the birth certificate or other documents and/or official documents reflect that one of said parents was on active military service outside the State of Mississippi at the time of said birth. Further, if the birth certificate of each parent reflects that each parent was born in the State of Mississippi, then any child born outside the State of Mississippi of those parents may be issued a nonresident lifetime sportsman license for the above set out fee.

(5) Any materially false statement contained in an application for a lifetime license renders void the license issued pursuant to that application, and subjects the applicant to criminal prosecution under Section 49-7-45.

(6) Nothing in this section exempts an applicant for a lifetime license from meeting other qualifications or requirements otherwise established by law for the privilege of hunting or fishing.

SOURCES: Laws, 1988, ch. 545, § 2; Laws, 1991, ch. 529, § 1; Laws, 1995, ch. 558, § 1; Laws, 1997, ch. 608, § 1; Laws, 2001, ch. 505, § 1, eff from and after Mar. 24, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the subsection designators in (4). The paragraph letter "(a)" following the subsection number "(4)" was deleted. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Deposit of all proceeds from the sale of lifetime sportsman licenses to the Wildlife Endowment Fund, see § 49-7-155.

Resident who purchases a lifetime sportsman's license, in accordance with this section, entitled to fish in the marine salt waters of the state and is exempt from the purchase of a sport saltwater fishing license, see § 49-15-313.

§ 49-7-155. Wildlife Endowment Fund.

(1) The commission is hereby authorized to establish a fund to be known as the Wildlife Endowment Fund to be deposited in an approved state depository and expended by appropriation approved by the Legislature as provided by law. The department shall deposit all proceeds from the sale of lifetime licenses into such fund. The interest obtained from any investment or deposit of monies in such fund shall be deposited by the commission into such fund. The commission shall invest the assets of the fund as provided by law.

(2) The assets of the Wildlife Endowment Fund shall be derived from the proceeds of the sale of lifetime licenses authorized under Sections 49-7-151 through 49-7-155. The following limitations are placed on expenditures from the fund:

(a) No expenditure shall be made from the principal of the Wildlife Endowment Fund;

(b) The income earned and accruing from the investment of the Wildlife Endowment Fund shall be spent only in furthering the conservation of wildlife resources and the operations of the department in accomplishing the purposes of the department.

SOURCES: Laws, 1988, ch. 545, § 3; Laws, 1991, ch. 529, § 2, eff from and after July 1, 1991.

MIGRATORY WATERFOWL STAMPS

Sec.	
49-7-161.	Definitions.
49-7-163.	Unlawful to hunt or take migratory waterfowl without stamp or electronic equivalent; validation of stamp or proof of purchase of electronic equivalent; issuance or sale of stamp or electronic equivalent
49-7-165.	Fee for stamp.
49-7-167.	Disposition of revenues.
49-7-169.	Commission may enter into reciprocal agreements with other states.
49-7-171.	Ascertainment of acceptability of projects undertaken outside of state.
49-7-173.	Penalties.

§ 49-7-161. Definitions.

For purposes of Sections 49-7-161 through 49-7-173, unless the context otherwise requires, the following terms shall have the meaning described herein:

(a) "Migratory waterfowl" means any wild goose, brant or wild duck.

(b) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(c) "Stamp" means the state migratory waterfowl stamp or the electronic equivalent furnished by the commission.

SOURCES: Laws, 1976, ch. 434, § 1; Laws, 1993, ch. 463, § 6; Laws, 2003, ch. 323, § 1, eff from and after July 1, 2003.

§ 49-7-163. Unlawful to hunt or take migratory waterfowl without stamp or electronic equivalent; validation of stamp or proof of purchase of electronic equivalent; issuance or sale of stamp or electronic equivalent.

It is unlawful for any person sixteen (16) years of age or older to hunt or take any migratory waterfowl within this state without first procuring a state migratory waterfowl stamp or its electronic equivalent and having the stamp or proof of purchase of the electronic equivalent in his possession while hunting or taking any migratory waterfowl. Any penalty for not having the stamp in possession while engaged in hunting or taking migratory waterfowl shall be waived if the person can verify purchase of a stamp prior to the date of the violation. Each stamp shall be validated by the signature of the licensee written across the face of the stamp or the proof of purchase of the electronic equivalent. The commission shall determine the form of the stamp and the electronic equivalent and shall furnish the stamps to bonded agents for issuance or sale in the same manner as other types of licenses or cause the electronic equivalent to accrue to the purchaser's benefit when purchasing a license from an automated point of sale vendor.

SOURCES: Laws, 1976, ch. 434, § 2; Laws, 1993, ch. 463, § 7; Laws, 1996, ch. 371, § 1; Laws, 2003, ch. 323, § 2, eff from and after July 1, 2003.

§ 49-7-165. Fee for stamp.

The fee for each stamp issued under Sections 49-7-161 through 49-7-173 shall be Ten Dollars ($10.00).

SOURCES: Laws, 1976, ch. 434, § 3; Laws, 1993, ch. 463, § 8; Laws, 2001, ch. 436, § 1, eff from and after July 1, 2001.

§ 49-7-167. Disposition of revenues.

All revenue shall be used for projects approved by the commission for the purpose of protecting and propagating migratory waterfowl and for the development, restoration, maintenance or preservation of wetlands. Provided, however, that none of such funds shall be expended for administrative salaries.

The commission may enter into contracts with nonprofit organizations for the use of part of such funds outside the United States, if the commission finds that such contracts are necessary for carrying out the purposes of Sections 49-7-161 through 49-7-173.

SOURCES: Laws, 1976, ch. 434, § 4, eff from and after July 1, 1976.

§ 49-7-169. Commission may enter into reciprocal agreements with other states.

The commission may enter into reciprocal agreements with other states having a state migratory waterfowl stamp.

SOURCES: Laws, 1976, ch. 434, § 5; Laws, 2000, ch. 516, § 74, eff from and after passage (approved Apr. 30, 2000.)

§ 49-7-171. Ascertainment of acceptability of projects undertaken outside of state.

Before approving and allocating funds for a proposed project to be undertaken outside this state or outside the United States, the commission shall obtain evidence that the project is acceptable to the government agency having jurisdiction over the lands and waters affected by the project.

SOURCES: Laws, 1976, ch. 434, § 6, eff from and after July 1, 1976.

§ 49-7-173. Penalties.

Any person violating any of the provisions of Sections 49-7-161 through 49-7-173 shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Laws, 1976, ch. 434, § 7, eff from and after July 1, 1976.

Cross References — Imposition of standard state assessment in addition to all court-imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

BEAVER CONTROL PROGRAM

Sec.	
49-7-201.	Beaver control program established; funding; county contributions; "participating landowner" defined.
49-7-203.	Beaver Control Advisory Board created; composition of board; compensation of members; duties, responsibilities and authority of board.

§ 49-7-201. Beaver control program established; funding; county contributions; "participating landowner" defined.

(1) There is established a beaver control program which shall be developed by the Beaver Control Advisory Board created in Section 49-7-203 and administered by the Mississippi Department of Agriculture and Commerce with the advice of the board or administered by a federal agency or agencies under an agreement with the board for that purpose. The program shall be limited to the control or eradication of beavers only on private lands or public lands, excluding federally owned lands but including lands whereupon easements are granted to a federal entity. The board may employ any personnel as is necessary to implement its duties to administer the program and set the salary of the personnel subject to State Personnel Board guidelines.

(2) Any state, local or private funds available to the board to fund the program shall be used to match federal funds available for such purpose. The board may execute any agreements with any agency of the federal government as are necessary to obtain federal matching funds to finance the beaver control program.

(3) Nonfederal funds to help finance the program may be obtained by the board from the following sources:

(a) Appropriations by the Legislature;
(b) Contributions from participating counties;
(c) Charges on participating landowners; and/or
(d) Contributions from any other sources for such purpose.

(4)(a) Any county in the state desiring to participate in the program during its fiscal year shall contribute an amount established by the Beaver Control Advisory Board for such purpose from any funds available in its general fund. The amount established by the advisory board shall be the minimum annual contribution required for a county to participate in the program. The minimum required contribution must be approved by three-fourths (¾) of the advisory board members present and voting. In addition, a county may contribute an amount in excess of the minimum required contribution for administration of the beaver control program in that county from any revenues available. The board shall establish the due date for the payment of contributions by counties.

(b) The sum of county contributions may be matched by nonfederal funds available to the state for the beaver control program.

(5) Participating landowner means any person, corporation or association owning land in this state and taking part in the beaver control program.

SOURCES: Laws, 1989, ch. 402, § 1; Laws, 2000, ch. 516, § 75; Laws, 2002, ch. 428, § 1; Laws, 2009, ch. 514, § 1, eff from and after July 1, 2009.

§ 49-7-203. Beaver Control Advisory Board created; composition of board; compensation of members; duties, responsibilities and authority of board.

(1) There is created the Beaver Control Advisory Board which shall be composed of the administrative heads of the Mississippi Department of Wildlife, Fisheries and Parks, State Forestry Commission, Department of Agriculture and Commerce, Mississippi Department of Transportation and Mississippi State Cooperative Extension Services, the Executive Director of the Mississippi Association of Supervisors, the Executive Vice President of Delta Council and the President of the Mississippi Farm Bureau Federation. In addition, the board shall include, as advisory, and nonvoting members:

(a) The Chairmen of the House and Senate Wildlife, Fisheries and Parks Committees; and

(b) One at large member of the House and Senate appointed by the Lieutenant Governor and Speaker of the House.

(2) The board shall elect a chairman from among its members, who shall preside over meetings.

(3) The members of the board shall serve without compensation but all members of the board shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by law.

(4) The board shall have the following duties and responsibilities:

(a) To adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business;

(b) To develop a beaver control program to be administered by the Mississippi Department of Agriculture and Commerce or by any agency or agencies under an agreement with the board for that purpose;

(c) To designate the areas of the state having the greatest need for beaver control or eradication and establish a list of priority areas on an annual basis;

(d) To establish, assess and collect any fees charged to participating landowners; and

(e) To function in an advisory capacity to the Mississippi Department of Agriculture and Commerce or any agency or agencies administering the beaver control program.

(5) The board shall have the authority to develop any programs and implement any regulations and policies. The board may develop what it deems necessary to address beaver control within the state.

SOURCES: Laws, 1989, ch. 402, § 2; Laws, 2000, ch. 516, § 76; Laws, 2002, ch. 428, § 2; Laws, 2003, ch. 390, § 1; Laws, 2009, ch. 514, § 2, eff from and after July 1, 2009.

FORFEITURE OF PROPERTY FOR VIOLATION OF FISH AND GAME LAWS

SEC.	
49-7-251.	Petition for forfeiture; service of process; procedure to determine ownership of particular types of property; hearing prerequisite.
49-7-253.	Time to file answer; failure to file; time for hearing; burden of proof; evidence at hearing; decision.
49-7-255.	Liquidation of forfeited property; disposition of proceeds; retention and use of certain property; issuance of certificate of title.
49-7-257.	Administrative forfeiture procedures for certain property.

§ 49-7-251. Petition for forfeiture; service of process; procedure to determine ownership of particular types of property; hearing prerequisite.

(1) Except as otherwise provided in Section 49-7-257, when any property is seized pursuant to Section 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972, proceedings under this section shall be instituted promptly. Provided, however, that the seizing law enforcement agency may, in the sound exercise of discretion, decide not to bring a forfeiture action if the interests of bona fide lienholders or secured creditors equal or exceed the value of the seized property, or if other factors would produce a negative economic result. Provided further, that no property shall be subject to forfeiture which has been stolen from its owner if the owner can be identified and prosecution for the theft has been initiated.

(2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Department of Wildlife Conservation or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Department of Wildlife Conservation or the local law enforcement agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the Department of Wildlife Conservation or the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Department of Wildlife Conservation or the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the Department of Wildlife Conservation or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the Department of Wildlife Conservation or the local law enforcement agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Department of Wildlife Conservation or the local law enforcement agency shall make inquiry of the Administrator of the Mississippi Aeronautics Commission as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Department of Wildlife Conservation or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the Department of Wildlife Conservation or the local law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in

the property in the nature of a security interest which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(9) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the Department of Wildlife Conservation or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, Mississippi Code of 1972, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(10) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (7) of this section shall be introduced into evidence at the hearing.

SOURCES: Laws, 1989, ch. 468, § 1; Laws, 1991, ch. 522, § 1; Laws, 2000, ch. 516, § 77; Laws, 2001, ch. 495, § 25, eff from and after Jan. 1, 2002.

Editor's Note — Section 49-1-4 provides that the term "Department of Wildlife Conservation" shall mean the "Department of Wildlife, Fisheries and Parks".

Effective July 1, 2010, Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Seizure of property used in illegal hunting, see § 49-7-103.

Administrative forfeiture procedures for certain property, see § 49-7-257.

Confiscation and sale of vessels, see § 59-21-33.

JUDICIAL DECISIONS

1. In general.

Read literally, §§ 49-7-251 to 49-7-257 violate the Mississippi Constitution's due process guarantee, and therefore the statutes would be construed to include an exception for "innocent owners." Threlkeld v. State ex rel. Miss. Dep't of Wildlife, Fisheries & Parks, 586 So. 2d 756 (Miss. 1991).

§ 49-7-253. Time to file answer; failure to file; time for hearing; burden of proof; evidence at hearing; decision.

(1) Except as otherwise provided in Section 49-7-257, an owner of property that has been seized pursuant to Section 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972, shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court

shall hear evidence that the property is subject to forfeiture and forfeit the property to the Mississippi Department of Wildlife, Fisheries and Parks or the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court, if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the Mississippi Department of Wildlife, Fisheries and Parks, the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest or other interest in the nature of a security interest to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the Mississippi Department of Wildlife, Fisheries and Parks or the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the Mississippi Department of Wildlife, Fisheries and Parks or the local law enforcement agency.

SOURCES: Laws, 1989, ch. 468, § 2; Laws, 1991, ch. 522, § 2; Laws, 2000, ch. 516, § 78, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Seizure of property used in illegal hunting, see § 49-7-103. Confiscation and sale of vessels, see § 59-21-33.

JUDICIAL DECISIONS

1. In general.

Read literally, §§ 49-7-251 to 49-7-257 violate the Mississippi Constitution's due process guarantee, and therefore the statutes would be construed to include an exception for "innocent owners." Threlkeld v. State ex rel. Miss. Dep't of Wildlife, Fisheries & Parks, 586 So. 2d 756 (Miss. 1991).

§ 49-7-255. Liquidation of forfeited property; disposition of proceeds; retention and use of certain property; issuance of certificate of title.

(1) All other property which is forfeited under Sections 49-7-251 through 49-7-257, and except as provided in subsections (2), (5) and (6) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and fifty percent (50%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their fifty percent (50%), a petition shall be filed by any one (1) of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(2) All money which is forfeited under Sections 49-7-251 through 49-7-257 shall be divided, deposited and credited in the same manner as set forth in subsection (1) of this section.

(3) All property forfeited, deposited and credited to the Mississippi Department of Wildlife, Fisheries and Parks under Sections 49-7-251 through 49-7-257 shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Department of Wildlife, Fisheries and Parks upon appropriation by the Legislature.

(4) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (1) of this section.

(5) Any state, county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property or money that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such state, county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (7) of this section.

(6) The Mississippi Department of Wildlife, Fisheries and Parks may maintain, repair, use and operate for official purposes all property, other than money that has been forfeited to the Mississippi Department of Wildlife, Fisheries and Parks if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the Mississippi Department of Wildlife, Fisheries and Parks may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that such property can be released for use by the department.

The Mississippi Department of Wildlife, Fisheries and Parks may maintain, repair, use and operate such property with money appropriated to the department for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the Mississippi Department of Wildlife, Fisheries and Parks is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (7) of this section.

(7) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SOURCES: Laws, 1989, ch. 468, § 3; Laws, 2000, ch. 516, § 79, eff from and after passage (approved Apr. 30, 2000.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Seizure of property used in illegal hunting, see § 49-7-103.

Administrative forfeiture procedure for certain property, see § 49-7-257.

Confiscation and sale of vessels, see § 59-21-33.

Mississippi Motor Vehicle Title Law, see §§ 63-21-1 et seq.

JUDICIAL DECISIONS

1. In general.

Read literally, §§ 49-7-251 to 49-7-257 violate the Mississippi Constitution's due process guarantee, and therefore the statutes would be construed to include an exception for "innocent owners." Threlkeld v. State ex rel. Miss. Dep't of Wildlife, Fisheries & Parks, 586 So. 2d 756 (Miss. 1991).

§ 49-7-257. Administrative forfeiture procedures for certain property.

(1) When any property the value of which does not exceed Five Thousand Dollars ($5,000.00), is seized pursuant to Section 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt requested, to all persons who are required to be notified pursuant to Section 49-7-251(2).

(3) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the Game and Fish Law, as set forth in Section 49-7-103, Mississippi Code of 1972;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the seizing law enforcement agency, within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(6) If no request for judicial review is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 49-7-255.

(7) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in Section 49-7-251.

SOURCES: Laws, 1989, ch. 468, § 4; Laws, 1991, ch. 522, § 3, eff from and after July 1, 1991.

Cross References — Seizure of property used in illegal hunting, see § 49-7-103.
Alternative procedures for forfeiture, see §§ 49-7-251, 49-7-253.
Confiscation and sale of vessels, see § 59-21-33.

JUDICIAL DECISIONS

1. In general.

Read literally, §§ 49-7-251 to 49-7-257 violate the Mississippi Constitution's due process guarantee, and therefore the statutes would be construed to include an exception for "innocent owners." Threlkeld v. State ex rel. Miss. Dep't of Wildlife, Fisheries & Parks, 586 So. 2d 756 (Miss. 1991).

HUNTING INCIDENTS IN WHICH USE OF WEAPON CAUSES INJURY OR DEATH TO A PERSON

SEC.
49-7-301. Implied consent to chemical test of certain bodily substances for presence of alcohol or other drugs; validity of chemical analysis; who may take bodily substance specimens.
49-7-303. Revocation or suspension of hunting license where use of weapon by person with specified alcohol concentration causes serious injury or death to another person; admissibility of chemical test results in civil or criminal actions; hunter education course required for restoration of hunting privileges.
49-7-305. Hunting incident reports.

§ 49-7-301. Implied consent to chemical test of certain bodily substances for presence of alcohol or other drugs; validity of chemical analysis; who may take bodily substance specimens.

(1) Any person who exercises the privilege of hunting in this state shall be deemed to have given implied consent to a chemical test of his blood, breath, urine or other bodily substance for the purpose of determining the presence of alcohol or any other drug if the person is involved in a hunting incident in which his use of a weapon caused an injury or death to a person.

(2) For the chemical analysis of the person's blood, breath, urine or other bodily substance to be considered valid under this section, the analysis must have been performed according to the requirements established in Section 63-11-19.

(3) When a person undergoes a chemical test at the request of a law enforcement officer, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may draw blood for

the purpose of determining the alcohol or drug content therein. This limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, laboratory technician, emergency medical technician or other qualified person shall incur any civil liability as a result of the medically proper taking of the blood specimens when requested by a law enforcement officer.

SOURCES: Laws, 2006, ch. 553, § 2, eff from and after July 1, 2006.

§ 49-7-303. Revocation or suspension of hunting license where use of weapon by person with specified alcohol concentration causes serious injury or death to another person; admissibility of chemical test results in civil or criminal actions; hunter education course required for restoration of hunting privileges.

(1) A person involved in a hunting incident in which his use of a weapon caused a serious bodily injury or death to another person and who has an alcohol concentration of eight one-hundredths percent (.08%) or more based on specified levels in Section 63-11-30, or is under the influence of any drug or controlled substance, shall have his hunting privileges revoked or suspended for two (2) years, in addition to any other punishment imposed. The chemical test must have been administered within three (3) hours after the hunting incident.

(2) If a person refuses to submit to the test at the request of a law enforcement officer, then none shall be given. The hunting privileges of a person who refuses the test shall be suspended for four (4) years. The law enforcement officer shall inform the person that his refusal to submit to a test is admissible in court and that his hunting privileges will be revoked or suspended for four (4) years.

(3) The results of such tests and the refusal to submit to a test shall be admissible in any civil or criminal action arising out of the hunting incident in which the person was involved.

(4) Any person whose hunting privileges are revoked or suspended under this section shall be required to complete an approved hunter education course before hunting privileges may be restored.

SOURCES: Laws, 2006, ch. 553, § 3, eff from and after July 1, 2006.

§ 49-7-305. Hunting incident reports.

(1) Hunting incident reports shall be exempt from disclosure or dissemination under the Mississippi Public Records Act of 1983 in accordance with the provisions of Section 45-29-1.

(2) Upon written request of any person involved in the hunting incident, the representative of his estate, the surviving spouse or surviving next of kin,

the commission may disclose to the requesting party or the requestor's legal counsel or insurance representative any information contained in the report.

(3) The commission shall charge a minimum reproduction fee of Ten Dollars ($10.00) plus any other costs associated with the request for the report.

SOURCES: Laws, 2006, ch. 553, § 4, eff from and after July 1, 2006.

Editor's Note — Section 45-29-1, referred to in this section, was repealed by Laws of 2008, ch. 392, § 4, effective from and after July 1, 2008. For present similar provisions, see § 25-61-12.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

CHAPTER 8

Importation, Sale and Possession of Inherently Dangerous Wild Animals

Sec.

49-8-1.	Legislative findings and declarations.
49-8-3.	Definitions.
49-8-5.	Animals inherently dangerous to humans.
49-8-7.	Possession of wild animals prohibited; permit required; exemptions.
49-8-9.	Powers and duties of commission.
49-8-11.	Powers and duties of department.
49-8-13.	Inspections; notification of escape of wild animal.
49-8-15.	Penalty.
49-8-17.	Authority of counties and municipalities to regulate possession of wild animals.
49-8-19.	Chapter not applicable to certain livestock.

§ 49-8-1. Legislative findings and declarations.

The Legislature finds and declares that it is in the public interest to ensure the public health, safety and welfare by strictly regulating the importation, sale, transfer and possession of those wild animals inherently dangerous to humans. In addition, the Legislature finds that these wild animals may pose a threat of introducing disease that is harmful to humans and Mississippi's wildlife. The Legislature further finds and declares that wildlife inherently dangerous to humans may be possessed only as provided in this chapter. The importation, sale, transfer and possession of these wild animals are privileges that are not to be granted unless it can be clearly demonstrated that the privileges can be exercised in a manner that does not pose unnecessary risk to the citizens of this state and indigenous wildlife.

SOURCES: Laws, 1997, ch. 571, § 1, eff from and after passage (approved April 23, 1997).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-8-3. Definitions.

For purposes of this chapter:

(a) "Commission" means the Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Department of Wildlife, Fisheries and Parks.

(c) "Wild animal" means any wild animal classified as inherently dangerous to humans as provided in Section 49-8-5.

SOURCES: Laws, 1997, ch. 571, § 2, eff from and after passage (approved April 23, 1997).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first paragraph. The words "For the purposes of this Sections 49-8-1 et seq." were changed to "For the purposes of Section 49-8-1 et seq." The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 49-8-5. Animals inherently dangerous to humans.

The following wild animals are classed as animals inherently dangerous to humans:

(a) Order Primates:

(i) Family Pongidae (gibbons, orangutan, chimpanzees, siamangs and gorillas) — all species;

(ii) Family Cercopithecidae:

A. Genus Macaca (macaques) — all species;

B. Genus Papio (mandrills, drills and baboons) — all species;

C. Theropithecus Gelada (Gelada baboon);

(b) Order Carnivora:

(i) Family Canidae:

A. Genus Canis (wolves, jackals and dingos; all species, including crosses between wolves and domestic animals);

B. Chrysocyon brachyurus (maned wolf);

C. Cuon alpinus (red dog);

D. Lycaon pictus (African hunting dog);

(ii) Family Ursidae (bears) — all species;

(iii) Family Mustelidae — Gulo gulo (wolverine);

(iv) Family Hyaenidae (hyenas) — all species;

(v) Family Felidae:

A. Genus Leo or Panthera or Neofelis (lions, tigers, jaguars and leopards) — all species;

B. Unica unica (snow leopard);

C. Acinonyx jubatus (cheetah);

D. Felis concolor (cougar) — all subspecies;

(c) Order Proboscidae: Family Elephantidae (elephants) — all species;

(d) Order Perissodactyla: Family Rhinocerotidae (rhinoceroses) — all species;

(e) Order Artiodactyla:

(ii) Family Hippopotamidae — Hippopotamus amphibius (hippopotamus);

(ii) Family Bovidae: Syncerus caffer (African buffalo).

SOURCES: Laws, 1997, ch. 571, § 3, eff from and after passage (approved April 23, 1997).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-8-7. Possession of wild animals prohibited; permit required; exemptions.

(1)(a) It is unlawful for a person to import, transfer, sell, purchase or possess any wild animal classified inherently dangerous by law or regulation unless that person holds a permit under paragraph (b) or is exempted under paragraph (c).

(b)(i) Any person who possesses a wild animal on May 1, 1997, may receive a fee-exempt temporary permit for that animal if the person applies by July 1, 1997. The temporary permit shall be valid until such time as the department notifies the person of the adoption of the regulations for wild animals and of the date the person must apply for an annual permit. After notification, the person shall apply for an annual permit.

(ii) A person must obtain a permit before that person takes possession of a wild animal. The applicant must comply with all the requirements of this chapter and the regulations promulgated by the commission to obtain the permit. Prior to the issuance of a permit, the applicant must provide proof of liability insurance in the amount of One Hundred Thousand Dollars ($100,000.00) for each wild animal up to a maximum of One Million Dollars ($1,000,000.00). An applicant shall have the burden of proving that any wild animals subject to this chapter are or will be imported, transferred, sold, purchased or possessed in compliance with this chapter and regulations.

(c) Public zoos, university research facilities, governmental agencies, transient circuses and rehabilitation and sanctuary facilities may be exempted from having a permit if the exemption is approved by the commission.

(d) Any permit issued under this chapter shall be valid for one (1) year and only for the species specified. A permit is required for each wild animal possessed. A permit for a female wild animal shall cover her progeny only while her progeny are physically dependant upon her or until her progeny are three (3) months old, whichever period is longer.

(2)(a) It is unlawful for any person to sell, transfer, deliver or give a wild animal classified as inherently dangerous to any other person unless the other person holds a permit for the wild animal or is exempt from holding a permit.

(b) Owners of unpermitted wild animals who do not qualify for a permit to possess the wild animal shall dispose of the wild animal according to law or regulation within thirty (30) days of notification by the department. Each day of possession of the unpermitted wild animal after the thirty-day period constitutes a separate violation.

SOURCES: Laws, 1997, ch. 571, § 4, eff from and after passage (approved April 23, 1997).

Cross References — Animals classified as inherently dangerous, see § 49-8-5.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-8-9. Powers and duties of commission.

(1) The commission shall have the following powers and duties:

(a) To prescribe the forms and types of permits;

(b) To establish fees for each type of permit but no permit fee shall exceed Three Hundred Dollars ($300.00);

(c) To establish qualifications for applicants and require the applicant to furnish any information it deems necessary;

(d) To exercise all powers necessary to implement a wild animal program.

(2) The commission shall specify by regulation the requirements for cages, facilities, handling, sanitation, veterinary care, food and water necessary for the welfare of the wild animals and to ensure the safety of the public.

SOURCES: Laws, 1997, ch. 571, § 5, eff from and after passage (approved April 23, 1997).

§ 49-8-11. Powers and duties of department.

The department shall have the following powers and duties:

(a) To issue or deny permits required by law or regulation;

(b) To inspect and determine if the facilities, conditions and standards prescribed by law and regulation are sufficient for the safety of the public;

(c) To place conditions on a permit to ensure compliance; and

(d) To seize any wild animal possessed in violation of this chapter or regulations.

SOURCES: Laws, 1997, ch. 571, § 6, eff from and after passage (approved April 23, 1997).

§ 49-8-13. Inspections; notification of escape of wild animal.

(1) Any person possessing wild animals shall allow, at reasonable times and without a search warrant, the department to inspect all wild animals, facilities and records relating to the wild animals to ensure compliance.

(2) A permittee shall immediately notify the department and the local law enforcement agency of any escape of a wild animal.

SOURCES: Laws, 1997, ch. 571, § 7, eff from and after passage (approved April 23, 1997).

§ 49-8-15. Penalty.

A violation of this chapter is a Class I violation and is punishable as provided in Section 49-7-141, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 571, § 8, eff from and after passage (approved April 23, 1997).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-8-17. Authority of counties and municipalities to regulate possession of wild animals.

Counties and municipalities may enact ordinances regulating or prohibiting the possession of wild animals if the ordinances are more stringent than this chapter or the regulations promulgated by the commission.

SOURCES: Laws, 1997, ch. 571, § 9, eff from and after passage (approved April 23, 1997).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state wildlife possession laws. 50 A.L.R.5th 703.

§ 49-8-19. Chapter not applicable to certain livestock.

This chapter shall not apply to livestock regulated by the Mississippi Department of Agriculture and Commerce.

SOURCES: Laws, 1997, ch. 571, § 10, eff from and after passage (approved April 23, 1997).

Cross References — Regulation as to transportation of livestock, see § 69-29-11.

CHAPTER 9

Mussels

Sec.	
49-9-1.	Definitions.
49-9-3.	Mussels to be owned by state.
49-9-5.	Unlawful to take; when.
49-9-7.	License fees.
49-9-9.	License.
49-9-10.	Exporters to pay severance fees; surety bonds.
49-9-11.	Deposit of collected monies in game and fish protection fund.
49-9-13.	Regulation of mussel beds; taking of mussels; notice.
49-9-15.	Hearings; notice; rules and regulations.
49-9-17.	Penalties.

§ 49-9-1. Definitions.

As used in this chapter, the following words shall have the meanings ascribed to them in this section:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Department of Wildlife, Fisheries and Parks.

(c) "Director" means the executive director of the department.

(d) "Exporter" means a person, firm or corporation who buys or obtains mussels from mussel harvesters or buyers for export from Mississippi.

(e) "Mussel," means and embraces the pearly fresh water mussel, clam, or naiad, and the shells thereof.

(f) "Mussel Abatement Program" means the killing, destruction or permanent eradication of mussels which are attached to or are blocking water intake structures solely for the purpose of safeguarding mechanical equipment used in a company, commercial operation or farm and to maintain the continued safe operation of such water intake structures and mechanical equipment.

SOURCES: Codes, 1942, § 5921; Laws, 1936, ch. 288; Laws, 1991, ch. 486, § 1; Laws, 1993, ch. 462, § 1, eff from and after July 1, 1993.

§ 49-9-3. Mussels to be owned by state.

The ownership and title of all mussels found in or upon the fresh water bottoms within this state, is hereby declared to be vested in the state.

SOURCES: Codes, 1942, § 5913; Laws, 1936, ch. 288.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 5, 13.

CJS. 36A C.J.S., Fish §§ 2, 14.

§ 49-9-5. Unlawful to take; when.

(1) It is unlawful for any person to take, catch or kill mussels by means of any kind of apparatus or in any manner whatsoever in any of the fresh waters of this state without first having secured a license or permit issued in accordance with this chapter.

(2) It is unlawful for any person to take from any of the fresh waters of this state any kind of mussels in any manner for the purpose of culture or scientific investigation, without first obtaining a permit from the commission.

(3) It is unlawful for any person to take mussels by means of dredges, drags or scoops, other than hand tongs.

SOURCES: Codes, 1942, §§ 5914, 5920; Laws, 1936, ch. 288; Laws, 1991, ch. 486, § 2, eff from and after July 1, 1991.

Cross References — Issuance of scientific permits, see § 49-1-41.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 23, 47.

CJS. 36A C.J.S., Fish §§ 21, 28.

§ 49-9-7. License fees.

Any resident, except any company, commercial operation or farm which operates a mussel abatement program, desiring to catch, take or kill mussels in any of the fresh waters of this state except as provided for by subsection (2) of Section 49-9-5, shall apply to the commission, and pay a fee in the sum of Seven Hundred Fifty Dollars ($750.00). Any person desiring to purchase mussel shells as mussels in the shell shall apply to the commission accompanied by a fee of Two Thousand Five Hundred Dollars ($2,500.00). A nonresident desiring to catch, take or kill mussels in any fresh water of this state except as provided by subsection (2) of Section 49-9-5, shall apply to the commission, and pay a fee of not less than Two Thousand Dollars ($2,000.00). A nonresident from a state which does not issue a nonresident mussel license shall be prohibited from obtaining a nonresident license from this state.

SOURCES: Codes, 1942, § 5915; Laws, 1936, ch. 288; Laws, 1970, ch. 290; Laws, 1991, ch. 486, § 3; Laws, 1993, ch. 462, § 2, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

CJS. 36A C.J.S., Fish § 28.

§ 49-9-9. License.

The director shall, upon receipt of the proper application provided for in Section 49-9-7, and the proper fee, issue a license to catch, take or kill mussels. All licenses issued shall be good from the date of issuance to the first day of July following such issuance. Licenses shall be consecutively numbered as issued and a record shall be kept thereof in the office of the department. Such license shall state whether it is a resident or a nonresident license, the address of the licensee, and the amount paid for the license. The license shall also state what waters have been closed to the capture of mussels by the commission. Every person while taking, catching or killing mussels shall have such license in his possession and shall exhibit the same when requested to do so by an authorized officer.

SOURCES: Codes, 1942, § 5916; Laws, 1936, ch. 288; Laws, 1970, ch. 291, § 1; Laws, 1991, ch. 486, § 4, eff from and after July 1, 1991.

Cross References — Fishing license regulations, see § 49-7-9.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 36A C.J.S., Fish § 28.

§ 49-9-10. Exporters to pay severance fees; surety bonds.

Any exporter shall pay to the department a severance fee of an amount not to exceed one-tenth (1/10) of the value of the shells. The severance fee payments shall be made on the forms and in the manner prescribed by the commission. The exporter shall file a surety bond of Five Thousand Dollars ($5,000.00) with the department.

SOURCES: Laws, 1993, ch. 462, § 5, eff from and after July 1, 1993.

§ 49-9-11. Deposit of collected monies in game and fish protection fund.

The executive director shall keep a record of all applications and licenses issued by him and on the first day of each month shall deposit all monies collected under this chapter into the Game and Fish Protection fund. All monies thus collected and deposited shall be used to administer the mussel program by the department and the executive director for the enforcement of this chapter, and the game and fish laws of this state, for propagation and for biological investigation, and such other investigations as may be necessary.

SOURCES: Codes, 1942, § 5917; Laws, 1936, ch. 288; Laws, 1982, ch. 365, § 10; Laws, 1991, ch. 486, § 5; Laws, 1993, ch. 462, § 3, eff from and after July 1, 1993.

Cross References — Fisheries and wildlife fund, see § 49-5-21.
Direction that portion of all game and fish license fees collected each month be deposited into the Game and Fish Commission Motor Vehicle and Boat Fund, see § 49-6-3.

§ 49-9-13. Regulation of mussel beds; taking of mussels; notice.

The commission shall make such requirements and regulations governing the operations of boats and equipment in the taking of mussels as it may deem best for the proper enforcement of this chapter. To prevent the depletion of the mussel beds and to insure proper propagation of the mussels, the commission may close any beds to operators at any time and for such length of time as it deems necessary. During such closed season on any bed, no one shall take mussels therefrom. When an order is issued closing any mussel bed, notice shall be given as required by law.

SOURCES: Codes, 1942, § 5918.5; Laws, 1970, ch. 292, §§ 1 and 2; Laws, 1991, ch. 486, § 6, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 48, 49.

CJS. 36A C.J.S., Fish §§ 30-33, 35.

§ 49-9-15. Hearings; notice; rules and regulations.

The commission shall set hearings at such times and places, after having given thirty (30) days notice thereof by publication in some newspaper published in the State of Mississippi of general circulation within the state, at which hearings evidence shall be received in regard to the operation of boats and equipment in the taking of mussels in the fresh waters of this state. After such hearings, the commission shall issue reasonable rules and regulations in regard to same, and if the evidence so indicates, shall, in order to prevent the depletion of mussel beds and to insure the proper propagation of mussels, adopt such regulations as it deems necessary.

SOURCES: Codes, 1942, § 5918.7; Laws, 1970, ch. 289, § 1; Laws, 1991, ch. 486, § 7, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26, 40.

§ 49-9-17. Penalties.

Any person, firm, or corporation, violating this chapter, is guilty of a misdemeanor, and upon conviction, shall be fined twice the fee for the required license, or be imprisoned not more than three (3) months, or both, and shall forfeit any license issued by the department for a period of not less than twelve (12) consecutive months from the date of conviction. Any violator whose license has been revoked and who is apprehended for taking mussels during the twelve-month period of revocation shall be imprisoned not less than thirty (30) days nor more than six (6) months.

SOURCES: Codes, 1942, § 5922; Laws, 1936, ch. 288; Laws, 1991, ch. 486, § 8; Laws, 1993, ch. 462, § 4, eff from and after July 1, 1993.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 42 et seq.

CHAPTER 10

Wildlife Violator Compact

Sec.
49-10-1. Enactment; provisions of compact.
49-10-3. Penalties for violations by person whose hunting privileges are suspended under compact.
49-10-5. Rules and regulations to be made and published by Commission on Wildlife, Fisheries and Parks.

§ 49-10-1. Enactment; provisions of compact.

The Wildlife Violator Compact is enacted into law and entered into by the State of Mississippi with any and all states legally joining therein in accordance with its terms. The compact is substantially as follows:

WILDLIFE VIOLATOR COMPACT

ARTICLE I
FINDINGS, DECLARATION OF POLICY, AND PURPOSE

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance or administrative rule relating to the management of those resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(A) Must post collateral or bond to secure appearance for a trial at a later date; or

(B) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(C) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges or rights of any person whose license privileges or rights have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II
DEFINITIONS

Unless the context requires otherwise, the definitions in this article apply through this compact and are intended only for the implementation of this compact:

(a) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Home state" means the state of primary residence of a person.

(f) "Issuing state" means the party state which issues a wildlife citation to the violator.

(g) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(h) "Licensing authority" means the department within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(i) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(j) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(k) "State" means any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(*l*) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges or rights, including the privilege or right to apply for, purchase, or exercise the benefits conferred by any license.

(m) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(n) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(o) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(p) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(q) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III
PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual adopted by the Commission on Wildlife, Fisheries and Parks as a rule; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual adopted by the Commission on Wildlife, Fisheries and Parks as a rule as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual adopted by the Commission on Wildlife, Fisheries and Parks as a rule.

ARTICLE IV
PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges or rights until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual adopted by the Commission on Wildlife, Fisheries and Parks as a rule.

ARTICLE V
RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges or rights of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and would have been the basis for suspension of license privileges or rights in their state.

ARTICLE VI
APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII
COMPACT ADMINISTRATIVE PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board of compact administrators shall be composed of one (1) representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state, or his or her designee, and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board of compact administrators member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board of compact administrators.

(b) Each member of the board of compact administrators shall be entitled to one (1) vote. No action of the board of compact administrators shall be binding unless taken at a meeting at which a majority of the total number of votes on the board of compact administrators are cast in favor thereof. Action by the board of compact administrators shall be only at a meeting at which a majority of the party states are represented.

(c) The board of compact administrators shall elect annually, from its membership, a chairperson and vice chairperson.

(d) The board of compact administrators shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board of compact administrators may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose of the same.

(f) The board of compact administrators may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or any private nonprofit organization or institution.

(g) The board of compact administrators shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to the board of compact administrators action shall be contained in the compact manual adopted by the Commission on Wildlife, Fisheries and Parks as a rule.

ARTICLE VIII
ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board of compact administrators.

(2) The resolution shall be in a form and content as provided in the compact manual adopted by the Commission on Wildlife, Fisheries and

Parks as a rule and shall include statements that in substance are as follows:

(A) A citation of the authority by which the state is empowered to become a party to this compact;

(B) Agreement to comply with the terms and provisions of the compact; and

(C) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than sixty days after notice has been given by the chairperson of the board of compact administrators or by the secretariat of the board of compact administrators to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

ARTICLE IX
AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairperson within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI
TITLE

This compact shall be known as the “Wildlife Violator Compact.”

SOURCES: Laws, 2007, ch. 345, § 1, eff from and after July 1, 2007.

Cross References — Licensing generally, see §§ 49-7-1 et seq.

Comparable Laws from other States — Alaska: Alaska Stat. § 16.05.332.
Arizona: A.R.S. § 17-501 et seq.
California: Cal Fish & G Code § 716 et seq.
Colorado: C.R.S. § 24-60-2601 et seq.
Florida: Fla. Stat. § 379.2255.
Georgia: O.C.G.A. § 27-2-40.
Idaho: Idaho Code § 36-2301 et seq.
Indiana: Burns Ind. Code Ann. § 14-22-41-1 et seq.
Kansas: K.S.A. § 32-1061 et seq.
Louisiana: La. R.S. 56:69.21 et seq.
Maryland: Md. NATURAL RESOURCES Code Ann. § 10-1201.
Michigan: MCLS § 324.1615.
Mississippi: Miss. Code Ann. § 49-10-1.
Montana: Mont. Code Anno., § 87-1-801 et seq.
Nevada: Nev. Rev. Stat. Ann. § 506.010.
New Mexico: N.M. Stat. Ann. § 11-16-1 et seq.
New York: NY CLS ECL § 11-2501 et seq.
North Carolina: N.C. Gen. Stat. § 113-300.5 et seq.
North Dakota: N.D. Cent. Code, § 20.1-16-01 et seq.
Oregon: ORS § 496.750.
South Dakota: S.D. Codified Laws § 41-15A-1 et seq.
Utah: Utah Code Ann. § 23-25-1 et seq.
Washington: Rev. Code Wash. (ARCW) § 77.75.070.
West Virginia: W. Va. Code § 20-2C-1.
Wisconsin: Wis. Stat. § 29.03.
Wyoming: Wyo. Stat. § 23-6-301 et seq.

§ 49-10-3. Penalties for violations by person whose hunting privileges are suspended under compact.

It is unlawful for any person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife, having been suspended or revoked pursuant to this article, to exercise that right or privilege within this state or to purchase or possess such a license which grants such right or privilege. Any person who hunts, fishes, traps, possesses, or transports wildlife in this state or who purchases or possesses a license to hunt, fish, trap, possess, or transport wildlife in this state in violation of such suspension or revocation pursuant to this compact shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Five Thousand Dollars ($5,000.00) or imprisonment for a period not exceeding twelve (12) months or both.

SOURCES: Laws, 2007, ch. 345, § 2, eff from and after July 1, 2007.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 49-10-5. Rules and regulations to be made and published by Commission on Wildlife, Fisheries and Parks.

The Commission on Wildlife, Fisheries and Parks shall make and publish such rules and regulations, not inconsistent with law, as it deems necessary to carry out the purposes of the Wildlife Violator Compact.

SOURCES: Laws, 2007, ch. 345, § 3, eff from and after July 1, 2007.

CHAPTER 11

Private Shooting Preserves

Sec.
49-11-1. Definitions.
49-11-3. Persons to whom operating licenses may be issued; area and other requirements; regulatory authority [Subsection (3) repealed effective July 1, 2014].
49-11-5. Fees for shooting preserve and commercial wildlife enclosure licenses.
49-11-7. License to indicate whether preserve or commercial wildlife enclosure is open to public; records of department.
49-11-9. Chapter and license hereunder to be supplemental and additional.
49-11-11. Repealed.
49-11-13. Hunting season.
49-11-15. Game which may be hunted; authority of commission.
49-11-17. Recovery of released game.
49-11-19. Authority of operators restrictions.
49-11-21. Harvesting of wild game on shooting preserves or commercial wildlife enclosures.
49-11-23. Certificate issued to hunter or person leaving preserve with harvested game.
49-11-25. Records of operators; consent to patrolling of preserve or enclosure areas.
49-11-27. Penalties for violations.
49-11-29. Chapter not applicable to fox, coyote, or rabbit enclosures.

§ 49-11-1. Definitions.

For purposes of this chapter:

(a) "Commission" means the Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Department of Wildlife, Fisheries and Parks.

(c) "Operator" means a person licensed to operate a shooting preserve or a commercial wildlife enclosure.

SOURCES: Codes, 1942, § 5899-01; Laws, 1962, ch. 182, § 1; Laws, 1997, ch. 546, § 1, eff from and after July 1, 1997.

Cross References — Regulation of game and fish management projects, see §§ 49-5-13 et seq.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 5899-01, cited argumentatively, as indicating that licensing requirements apply equally to those hunting and fishing on privately as well as publicly owned lands. State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 3.

§ 49-11-3. Persons to whom operating licenses may be issued; area and other requirements; regulatory authority [Subsection (3) repealed effective July 1, 2014].

(1) The department may issue operating licenses to any person, partnership, association or corporation for the operation of shooting preserves or commercial wildlife enclosures that meet the following requirements and any applicable regulations:

(a) Each shooting preserve shall contain a minimum of one hundred (100) acres in one (1) tract of leased or owned land (including water area, if any) and shall be restricted to not more than six hundred forty (640) contiguous acres (including water area, if any), except that preserves confined to the releasing of ducks only may be authorized to operate with a minimum of fifty (50) contiguous acres (including water area).

(b) The boundaries of each shooting preserve shall be clearly defined and posted with signs erected at intervals of three hundred (300) feet or less.

(c) Each commercial wildlife enclosure shall contain a minimum of three hundred (300) acres in one (1) tract of leased or owned land (including water area, if any). No commercial wildlife enclosure shall be constructed in such a manner as to allow ingress of native wild animals without providing means of egress.

(d) The preserve or enclosure must be privately owned and operated.

(2) The commission may issue any rules or regulations necessary to regulate shooting preserves and commercial wildlife enclosures and to enforce this chapter.

(3)(a) The commission may regulate the hunting of nonnative cervids within a commercial wildlife enclosure, and the department may enter such enclosure as provided under Section 49-11-25 and enforce such regulations.

(b) This subsection (3) shall repeal on July 1, 2014.

SOURCES: Codes, 1942, § 5899-02; Laws, 1962, ch. 182, § 2; Laws, 1979, ch. 375, § 1; Laws, 1997, ch. 546, § 2; Laws, 2003, ch. 516, § 9; reenacted and amended, Laws, 2005, ch. 530, § 2; Laws, 2007, ch. 399, § 2; Laws, 2009, ch. 523, § 3; Laws, 2012, ch. 326, § 3; Laws, 2012, ch. 422, § 2, eff from and after passage (approved Apr. 18, 2012.)

Joint Legislative Committee Note — Section 3 of ch. 326, Laws of 2012, effective July 1, 2012 (approved April 13, 2012), amended this section. Section 2 of ch. 422, Laws of 2012, effective from and after passage (approved April 18, 2012), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 326, Laws of 2012, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The first 2012 amendment (ch. 326), extended the repealer provision in (3)(b) from "July 1, 2012" to "July 1, 2014."

The second 2012 amendment (ch. 422), extended the repealer provision from "July 1, 2012" to "July 1, 2014" at the end of (3)(b).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 3.

§ 49-11-5. Fees for shooting preserve and commercial wildlife enclosure licenses.

The fee for a shooting preserve license or a commercial wildlife enclosure license shall be One Hundred Dollars ($100.00) per year for the first three hundred (300) acres of shooting preserve area or commercial wildlife enclosure area, and Ten Dollars ($10.00) per year for each additional one hundred (100) acres or parts thereof.

SOURCES: Codes, 1942, § 5899-04; Laws, 1962, ch. 182, § 4; Laws, 1979, ch. 375, § 2; Laws, 1997, ch. 546, § 3, eff from and after July 1, 1997.

Cross References — Direction that portion of all game and fish license fees collected each month be deposited into the Game and Fish Commission Motor Vehicle and Boat Fund, see § 49-6-3.

§ 49-11-7. License to indicate whether preserve or commercial wildlife enclosure is open to public; records of department.

Each license issued by the department shall designate whether or not the preserve or commercial wildlife enclosure is open to the public on a commercial basis, or is restricted to a membership or other limited group. In the latter case, the license shall specify that the area is a restricted shooting preserve or commercial wildlife enclosure. The department shall maintain accurate listings of the names and addresses of the licensees and the location of the property. These lists shall be made available in their entirety to anyone requesting a copy, and shall specify whether the preserves or enclosures are public or private.

SOURCES: Codes, 1942, § 5899-12; Laws, 1962, ch. 182, § 12; Laws, 1997, ch. 546, § 4, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 12, 13, 14.

§ 49-11-9. Chapter and license hereunder to be supplemental and additional.

This chapter is supplemental and in addition to any other laws on related subject matters. Any license required under this chapter is in addition to any other licenses which may be required for commercial raising and sale of game birds or for the raising of game birds for propagation.

SOURCES: Codes, 1942, § 5899-13; Laws, 1962, ch. 182, § 13; Laws, 1997, ch. 546, § 5, eff from and after July 1, 1997.

Cross References — Commercial quail, see §§ 49-13-1 et seq.

§ 49-11-11. Repealed.

Repealed by Laws of 1989, ch. 377, § 11, eff from and after July 1, 1989. [Codes, 1942, § 5899-11; Laws, 1962, ch. 182, § 11]

Editor's Note — Former § 49-11-11 required state hunting licenses for all persons hunting on shooting preserves.

§ 49-11-13. Hunting season.

The season for shooting preserves shall be for a period of seven (7) months beginning October 1 and ending April 30, except as further restricted by the operator.

SOURCES: Codes, 1942, § 5899-07; Laws, 1962, ch. 182, § 7; Laws, 1979, ch. 375, § 3; Laws, 1991, ch. 304 § 1; Laws, 1997, ch. 546, § 6, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Applicability, to domesticated or captive game, of game laws relating to closed seasons and the like. 74 A.L.R.2d 974.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 48.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-11-15. Game which may be hunted; authority of commission.

(1) Artificially propagated pheasants, quail, chukar partridges, mallards and black ducks, and any game bird authorized by the commission are the only game which may be hunted on shooting preserves under this chapter.

(2) Mallards and black ducks released on a shooting preserve must have a one-fourth (¼) inch hole punched in the outer web of the right foot before the birds attain the age of six (6) weeks.

(3) The commission is authorized to specify the species of non-native wild game that may be released or hunted in commercial wildlife enclosures.

SOURCES: Codes, 1942, § 5899-03; Laws, 1962, ch. 182, § 3; Laws, 1979, ch. 375, § 4; Laws, 1997, ch. 546, § 7, eff from and after July 1, 1997.

§ 49-11-17. Recovery of released game.

The operating licenses issued by the department shall entitle licensees, and their guests or customers, to recover the total number of each species of game released on the premises each year.

SOURCES: Codes, 1942, § 5899-05; Laws, 1962, ch. 182, § 5; Laws, 1979, ch. 375, § 5; Laws, 1997, ch. 546, § 8, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 50.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-11-19. Authority of operators restrictions.

Operators may establish shooting limitations and restrictions on the age, sex and number of each species of released game that may be taken by each person.

SOURCES: Codes, 1942, § 5899-06; Laws, 1962, ch. 182, § 6; Laws, 1979, ch. 375, § 6; Laws, 1997, ch. 546, § 9, eff from and after July 1, 1997.

§ 49-11-21. Harvesting of wild game on shooting preserves or commercial wildlife enclosures.

Any native wild game found on shooting preserves or commercial wildlife enclosures may be harvested only in accordance with applicable game and hunting laws and regulations issued by the commission or the U.S. Fish and Wildlife Service.

SOURCES: Codes, 1942, § 5899-10; Laws, 1962, ch. 182, § 10; Laws, 1997, ch. 546, § 10, eff from and after July 1, 1997.

Cross References — Open season on wild turkey, see § 49-7-31.
Bag limit, see § 49-7-41.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 50.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 8.

§ 49-11-23. Certificate issued to hunter or person leaving preserve with harvested game.

The operator shall furnish and issue a consecutively numbered certificate to any hunter or person leaving with harvested game. The certificate shall bear the license number and name of the shooting preserve or commercial wildlife enclosure or its licensed operator. The certificate shall contain the person's name, address, date of issuance and number and species of harvested game in possession. The certificate must remain with the harvested game until the game is prepared for consumption.

SOURCES: Codes, 1942, § 5899-08; Laws, 1962, ch. 182, § 8; Laws, 1979, ch 375, § 7; Laws, 1997, ch. 546, § 11, eff from and after July 1, 1997.

§ 49-11-25. Records of operators; consent to patrolling of preserve or enclosure areas.

Each operator shall maintain a registration book listing the names and hunting license numbers of all hunters and the date on which they hunted. An accurate record must be maintained of the total number, by species, of game released and harvested each day the preserve or enclosure is hunted. The operator shall submit this information in an annual report of operations each year to the department not later than June 1 following. These records shall be open to inspection by the department at any reasonable time. Any person, partnership, association or corporation licensed hereunder consents to the patrolling of the shooting preserve or commercial wildlife enclosure areas by the department, without warrant, to determine if any of the game laws or regulations are being violated.

SOURCES: Codes, 1942, § 5899-09; Laws, 1962, ch. 182, § 9; Laws, 1979, ch. 375, § 8; Laws, 1997, ch. 546, § 12, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 3.

§ 49-11-27. Penalties for violations.

Any person, firm or corporation violating any provision of this chapter is guilty of a Class I violation, and upon conviction thereof shall be punished as provided in Section 49-7-141. A multiple violator of this chapter shall be assessed double the maximum allowable fine.

SOURCES: Codes, 1942, § 5899-14; Laws, 1962, ch. 182, § 14; Laws, 1979, ch. 375, § 9; Laws, 1985, ch. 452, § 16; Laws, 1997, ch. 546, § 14; Laws, 2007, ch. 516, § 4; Laws, 2012, ch. 422, § 3, eff from and after passage (approved Apr. 18, 2012.)

Amendment Notes — The 2012 amendment deleted "and may, at the discretion of the commission, have his operator's license suspended by operation of law for a period of one (1) year" from the end of the section.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 54.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-11-29. Chapter not applicable to fox, coyote, or rabbit enclosures.

This chapter shall not apply to the operation of fox, coyote and rabbit enclosures as set forth in Section 49-7-34, Mississippi Code of 1972, and shall not be construed to regulate the operation of fox, coyote and rabbit enclosures.

SOURCES: Laws, 1997, ch. 546, § 13, eff from and after July 1, 1997.

CHAPTER 13

Commercial Quail

Sec.
49-13-1. Citation of chapter.
49-13-3. Definitions.
49-13-5. Who may engage in the business of propagating quail for commercial sale.
49-13-7. Commercial quail breeder's license.
49-13-9. Sale or transfer of quail carcasses; necessity of transfer by licensed commercial breeder; record of transfer; penalties.
49-13-11. Packaging and labeling for transferred quail carcasses.
49-13-13. Shipment by carrier.
49-13-15. Storage of carcasses.
49-13-17. Records; subsequent change of ownership.
49-13-19. Records; examination and inspection.
49-13-21. Shipments into state.
49-13-23. Penalties; suspension of license.
49-13-25. Raising of quail for other than commercial sale.

§ 49-13-1. Citation of chapter.

This chapter may be cited as the Mississippi Commercial Quail Law.

SOURCES: Codes, 1942, § 5922-01; Laws, 1962, ch. 185, § 1, eff from and after passage (approved May 2, 1962).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 3.

§ 49-13-3. Definitions.

As used in this chapter, the term:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "Pen-raised quail" means a quail that has been hatched from an egg laid by a quail confined in a pen or coop and has itself been wholly raised in a pen or coop by a duly licensed quail breeder holding a permit as provided by law from the Mississippi Commission on Wildlife, Fisheries and Parks.

(d) "Quail" means all species of quail native to North America and coturnix quail.

SOURCES: Codes, 1942, §§ 5922-02, 5922-03; Laws, 1962, ch. 185, §§ 2, 3; Laws, 1979, ch. 378, § 1; Laws, 2000, ch. 516, § 80, eff from and after passage (approved Apr. 30, 2000.)

§ 49-13-5. Who may engage in the business of propagating quail for commercial sale.

Any person, firm or corporation may engage in the business of propagating pen-raised quail for the commercial sale for consumption thereof by complying with the provisions of this chapter and may thereafter sell either live quail or the carcasses of such pen-raised quail either within or without this state.

SOURCES: Codes, 1942, § 5922-02; Laws, 1962, ch. 185, § 2, eff from and after passage (approved May 2, 1962).

RESEARCH REFERENCES

ALR. Applicability, to domesticated or captive game, of game laws relating to closed season and the like. 74 A.L.R.2d 974.

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 52.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 3, 9, 13.

§ 49-13-7. Commercial quail breeder's license.

A commercial quail breeder's license must first be obtained from the commission, or its agents. The license shall be applied for each year and shall be valid from April 1 to March 31 next following, upon payment of Twenty-five Dollars ($25.00) for each license. The license must bear a number as designated by the commission, and shall be conspicuously exhibited at all times at the place where quail are bred.

SOURCES: Codes, 1942, § 5922-04; Laws, 1962, ch. 185, § 4; Laws, 2000, ch. 516, § 81, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Direction that portion of all game and fish license fees collected each month be deposited into the Game and Fish Commission Motor Vehicle and Boat Fund, see § 49-6-3.

Exclusion of license for raising quail for other purpose than commercial sale, see § 49-13-25.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

§ 49-13-9. Sale or transfer of quail carcasses; necessity of transfer by licensed commercial breeder; record of transfer; penalties.

The sale or transfer or ownership of any pen-raised quail carcasses must originate with a sale or transfer made by a licensed commercial quail breeder.

Each licensed quail producer shall display the license on the premises in easy view and shall keep a record of each bird sale or gift.

The record of bird transfer should include the following entries: kind and number of quail, date of ownership transfer and name and address of purchaser or gift recipient. The record of transfer of ownership must be kept current and available at all times for inspection by a representative of the department. Record discrepancies may cause the licensed quail producer to be charged with a misdemeanor.

Any individual or owner of a business establishment possessing quail from a licensed producer shall be subject to having the birds confiscated and may be charged with a misdemeanor if a record of transfer of ownership does not appear on the record book of the licensed producer from whom the person in question states that he purchased or received the birds.

SOURCES: Codes, 1942, § 5922-05; Laws, 1962, ch. 185, § 5; Laws, 1979, ch. 378, § 2; Laws, 2000, ch. 516, § 82, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 52, 56.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 9, 13, 16-18.

§ 49-13-11. Packaging and labeling for transferred quail carcasses.

The carcasses of dressed pen-raised quail shall, when sold or given as a gift, be contained in a package or wrapper possessing, in plain easy-to-read print, the licensed seller's or donor's name, name of quail business (if used) and address. The package or wrapper may contain one or more birds.

SOURCES: Codes, 1942, § 5922-06; Laws, 1962, ch. 185, § 6; Laws, 1979, ch. 378, § 3, eff from and after July 1, 1979.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 51, 52.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 3, 9, 11, 13.

§ 49-13-13. Shipment by carrier.

When any package containing quail carcasses is to be shipped by rail, express or other carrier, public or private, the packages wherein the quail are contained must comply with the packaging or wrapping requirements set forth in Section 49-13-11 of the Mississippi Commercial Quail Law.

SOURCES: Codes, 1942, § 5922-07; Laws, 1962, ch. 285, § 7; Laws, 1979, ch. 378, § 4, eff from and after July 1, 1979.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 51.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 13.

§ 49-13-15. Storage of carcasses.

If a package or shipment of quail carcasses is kept in storage in any hotel, restaurant, cafe or boardinghouse, or elsewhere, the carcasses must remain in the packages or wrappers used by the licensed quail producer until the quail are being prepared for consumption.

SOURCES: Codes, 1942, § 5922-08; Laws, 1962, ch. 185, § 8; Laws, 1979, ch. 378, § 5, eff from and after July 1, 1979.

§ 49-13-17. Records; subsequent change of ownership.

In case of the resale or disposition of quail carcasses originally purchased or received from a licensed quail producer and in turn sold or donated by another person, a record of each subsequent change of ownership must be made. The following information must be recorded by the present owner about the owner who receives the quail: name and address of the person or business to which the quail carcasses were transferred, the date of the transfer and the kind and number of quail transferred. The record of the quail transfer of ownership must be kept by the person or business selling or donating the quail for a period of one (1) year following the ownership transfer and shall, upon request, be available for inspection by a representative of the department.

SOURCES: Codes, 1942, § 5922-09; Laws, 1962, ch. 185, § 9; Laws, 1979, ch. 378, § 6; Laws, 2000, ch. 516, § 83, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43,52.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 3, 9, 13.

§ 49-13-19. Records; examination and inspection.

Each person, firm or corporation, holding a commercial quail breeder's license shall keep permanent records in a suitable, permanently bound book of all birds' carcasses sold, to whom sold, the date of the sale, the address of the vendee or consignee and the number of carcasses sold, which record, as well as the premises of such licensed breeder, shall be subject to examination and inspection by any agent of the department or peace officer for violations of this chapter, without the issuance of any warrant upon displaying his credentials of authority to such breeder.

SOURCES: Codes, 1942, § 5922-10; Laws, 1962, ch. 185, § 10; Laws, 2000, ch. 516, § 84, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 3.

§ 49-13-21. Shipments into state.

Any person, firm or corporation shipping quail into this state shall be subject to the provisions of this chapter.

SOURCES: Codes, 1942, § 5922-11; Laws, 1962, ch. 185, § 11, eff from and after passage (approved May 2, 1962).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 51.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 11.

§ 49-13-23. Penalties; suspension of license.

Any person, firm or corporation violating any provision of this chapter is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00). Multiple violations of this chapter shall be assessed fines near the maximum allowable limits. Also, a person with multiple violations of this chapter may, at the discretion of the commission, have his commercial quail breeder's license suspended by operation of law for a period of one (1) year.

SOURCES: Codes, 1942, § 5922-12; Laws, 1962, ch. 185, § 12; Laws, 1979, ch. 378, § 7; Laws, 2000, ch. 516, § 85, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 42, 43, 54.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife § 15.

§ 49-13-25. Raising of quail for other than commercial sale.

Nothing contained in this chapter shall be construed to require any person, engaging in the raising of quail for purposes other than the raising of quail for commercial sale for consumption, to secure a commercial quail breeder's license, provided such person shall not raise more than one hundred (100) such birds in any calendar year for personal consumption.

SOURCES: Codes, 1942, § 5922-13; Laws, 1962, ch. 185, § 13, eff from and after passage (approved May 2, 1962).

CHAPTER 15

Seafood

Article 1. General Provisions 49-15-1
Article 3. Gulf States Marine Fisheries Compact 49-15-101
Article 4. Procedures for Forfeiture of Property Seized in Marine Violations 49-15-201
Article 5. Mississippi Commission on Marine Resources 49-15-301
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ARTICLE 1.

GENERAL PROVISIONS.

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49-15-3. Definitions.
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49-15-100.3. Prima facie evidence of use of prohibited equipment.

§ 49-15-1. Public policy of the state as to seafood laws.

As a guide to the interpretation and application of this chapter, the public policy of this state shall be to recognize the need for a concerted effort to work toward the protection, propagation and conservation of its seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi, which is one of the state's major economic resources and affords a livelihood to thousands of its citizens; and in this connection, it is the intent of the Legislature to provide a modern, sound, comprehensive and workable law to be administered by specialists, who are vested with full and ample authority to take such action as may be necessary in order to help protect, conserve and revitalize seafood life in the State of Mississippi; it being at all times remembered that all of the wild aquatic life found in the waters of the State of Mississippi and on the bottoms of such waters, until taken therefrom in the manner hereinafter prescribed, is recognized as the property of the State of Mississippi because of its very nature, as well as because of the great value of the state of the aquatic life for food and other necessary purposes.

SOURCES: Codes, 1942, § 6047-01; Laws, 1960, ch. 173, § 1, eff from and after passage (approved March 23, 1960).

Cross References — Required preparation and implementation of coastal area plan by marine resources council that would further public policy expressed by this section, see § 57-15-6.

JUDICIAL DECISIONS

1. In general.

Construction of boathouse by property owner with littoral rights was subject only to regulation by Bureau of Marine Resources. Watts v. Lawrence, 703 So. 2d 236 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources does not have the authority to establish criminal penalties under the Seafood Chapter of the Mississippi Code for violations of its ordinances. Gusa, November 20, 1998, A.G. Op. #98-0692.

The Commission on Marine Resources does not have the authority to levy administrative fines and to suspend or revoke fishing licenses for violations of the Commission's Ordinances or of the Seafood Chapter. Gusa, November 20, 1998, A.G. Op. #98-0692.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 1.

CJS. 36A C.J.S., Fish § 2.

§ 49-15-2. Standards for fishery conservation and management; fishery management plans.

Any fishery management plan, and any regulation promulgated to implement that plan or promulgated under the state seafood laws, shall be consistent with the following standards for fishery conservation and management:

(a) Conservation and management measures shall be based upon the best scientific information available;

(b) If it becomes necessary to allocate or assign fishing privileges among various fishermen, that allocation shall be (i) fair and equitable to those fishermen, (ii) reasonably calculated to promote conservation, and (iii) carried out in a manner that no particular individual, corporation or other entity acquires an excessive share of the privileges;

(c) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, but no measure shall have economic allocation as its sole purpose;

(d) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches;

(e) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication;

(f) Conservation and management measures shall, consistent with the conservation requirements of this state (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (i) provide for the sustained participation of the communities, and (ii) to the extent practicable, minimize adverse economic impacts on those communities;

(g) Conservation and management measures shall, to the extent practicable, (i) minimize bycatch, and (ii) to the extent bycatch cannot be avoided, minimize the mortality of that bycatch; and

(h) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

SOURCES: Laws, 1997, ch. 579, § 25, eff from and after July 2, 1997.

§ 49-15-3. Definitions.

As used in this chapter, the term:

(a) "Commission" means the Mississippi Commission on Marine Resources.

(b) "Department" means the Department of Marine Resources.

(c) "Domicile" means a person's principal or primary place of abode in which a person's habitation is fixed and to which the person, whenever absent, has the present intention of returning after a departure of absence therefrom, regardless of the duration of the absence. The burden of proving domicile in the State of Mississippi shall be on the person claiming that status. A person holding a current driver's license shall be deemed to be domiciled within the state issuing the license. If a person does not hold a current driver's license the following evidence may be considered in establishing, but is not necessarily determinative of domicile: residence for income or other tax purposes, homestead exemption receipt or other means prescribed by the commission. In the case of minors, domicile of the parents shall be used as evidence of the minor's domicile.

(d) "Game fish" means cobia, also known as ling or lemonfish (rachycentron canadum). The cobia is classified as game fish.

(e) "Illegal oysters" means:

(i) All untagged shell stock;

(ii) Shell oysters obtained from uncertified shops or dealers or from an unlicensed catcher;

(iii) Oysters obtained from waters not declared safe and sanitary by the department, except those oysters caught by the commission for re-laying or under private leases pursuant to Section 49-15-27;

(iv) Shucked oysters obtained from uncertified shops or repackers.

(f) "Inspector" means the chief inspector, the assistant chief inspector, deputy inspector, bureau director and certified enforcement officer employed by the department.

(g) "Natural reefs" means any bottom under the jurisdiction of the commission of one or more acres on which oysters grow naturally, or have grown naturally, in a quantity sufficient to warrant commercial fishing as a means of livelihood, or have been used in such a manner within a period of ten (10) years next preceding the time the bottoms may come up for determination by the commission.

(h) "Resident" means a person, firm or corporation that is domiciled in this state.

(i) "Seafood" means all oysters, saltwater fish, saltwater shrimp, diamondback terrapin, sea turtle, crabs and all other species of marine or saltwater animal life existing or living in the waters within the territorial jurisdiction of the State of Mississippi.

(j) "Tonging reefs" means any bottom under the jurisdiction of the commission designated by the commission as an area in which oysters may be taken by use of hand tongs, as provided in Section 49-15-39.

SOURCES: Codes, 1942, § 6047-02; Laws, 1960, ch. 173, § 2; Laws, 1978, ch. 484, § 23; Laws, 1982, ch. 446, § 1; Laws, 1988, ch. 395, § 6; Laws, 1993, ch. 532, § 4; Laws, 1993, ch. 603, § 4; Laws, 1994, ch. 578, § 13; Laws, 1996, ch. 436, § 1; Laws, 1997, ch. 399, § 1; Laws, 1997, ch. 488, § 1; Laws, 1999, ch. 585, § 1; Laws, 2000, ch. 524, § 2, eff from and after July 1, 2000.

Joint Legislative Committee Note — Section 1 of ch. 399, Laws of 1997, amended this section, effective from and after passage (approved March 18, 1997). Section 1 of ch. 488, Laws of 1997, effective from and after passage (approved March 27, 1997), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 488, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Cross References — Mississippi Commission on Marine Resources, see §§ 49-15-301 et seq.

§ 49-15-5. All seafoods initially the property of the state.

All seafoods existing or living in waters within the territorial jurisdiction of the State of Mississippi not held in private ownership legally acquired, and all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connecting with the Gulf of Mexico or Mississippi Sound within such territorial jurisdiction, including all oysters and other shell fish and parts thereof grown thereon, either naturally or cultivated, shall be, continue, and remain the property of the State of Mississippi, to be held in trust for the people thereof until title thereto shall be legally divested in the manner and form hereinafter authorized, and the same shall be under the exclusive control of the commission until the right of private ownership shall vest therein as hereinafter provided.

SOURCES: Codes, 1942, § 6047-03; Laws, 1960, ch. 173, § 3, eff from and after passage (approved March 23, 1960).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 1-5.

CJS. 36A C.J.S., Fish §§ 1-3.

§ 49-15-7. Oyster, clam, cay shells and other shells declared to be property of state.

All shells of dead oysters, clams and other shellfish; and all of the oyster shells, clam shells, mussel shells, dead reef shells, and cay shells, being upon or under the bottom of, or under the tidewaters within the territorial jurisdiction of the State of Mississippi, and all beds, banks and accumulations of such shells within such territorial jurisdiction on or under the bottoms of such waters, or surrounded by such waters, being the property of the State of Mississippi are hereby further declared to be the property of the State of Mississippi under the jurisdiction of the commission.

SOURCES: Codes, 1942, § 6048-01; Laws, 1962, ch. 193, § 1; Laws, 1974, ch. 572, § 1; Laws, 2000, ch. 516, § 86, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game and Wildlife Conservation § 1.

CJS. 36A C.J.S., Fish § 2.

§ 49-15-9. Rights of riparian owners on Gulf Coast defined.

The sole right of planting, cultivating in racks or other structures, and gathering oysters and erecting bathhouses and other structures in front of any land bordering on the Gulf of Mexico or Mississippi Sound or waters tributary thereto belongs to the riparian owner and extends not more than seven hundred fifty (750) yards from the shore, measuring from the average low water mark, but where the distance from shore to shore is less than fifteen hundred (1500) yards, the owners of either shore may plant and gather to a line equidistant between the two (2) shores, but no person shall plant in any natural channel so as to interfere with navigation, and such riparian rights shall not include any reef or natural oyster bed and does not extend beyond any channel. A riparian owner shall comply with the Coastal Wetlands Protection Act in exercising the use of these riparian rights. Stakes of such frail materials as will not injure any watercraft may be set up to designate the bounds of the plantation, but navigation shall not be impeded thereby. The riparian owner shall clearly mark such cultivation racks and other structures. The commission may adopt regulations to require that the racks are adequately marked to ensure the safety of users of public waters. Any oysters planted by such riparian owner are the private property of such riparian owner, subject to the right of the commission to adopt reasonable rules and regulations as to the planting and gathering of such oysters. All bathhouses, piers, wharfs, docks and pavilions, or other structures owned by riparian owner are likewise the private property of such owner, who shall be entitled to the exclusive use, occupancy and possession thereof, and may abate any private or public nuisance committed by any person or persons in the area of his riparian ownership and may, for such purposes, resort to any remedial action authorized by law. The governing authorities of any municipality and the board of supervisors of any county are authorized to adopt reasonable rules and regulations to protect riparian owners in the enjoyment of their riparian rights, and for such purposes may regulate the use of beaches, landings, and riparian areas abutting or fronting on roads, streets or highways.

SOURCES: Codes, 1942, § 6047-10; Laws, 1960, ch. 173, § 10; Laws, 1962, ch. 193, § 10; Laws, 1991, ch. 438 § 1, eff from and after passage (approved March 21, 1991).

JUDICIAL DECISIONS

1. Littoral rights.

Statute granting certain rights to erect boathouses and other structures to littoral owner up to 750 yards from shore addresses distance property owner's littoral rights reach, not who has littoral rights. Watts v. Lawrence, 703 So. 2d 236 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

Construction of boathouse more than 15 feet from lot line by subdivision lot owner who had littoral rights did not violate protective covenants of subdivision, where nothing clearly prohibited construction of boathouses on lots abutting water and many other houses had boathouses or piers. Watts v. Lawrence, 703 So. 2d 236 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 13 et seq.

CJS. 36A C.J.S., Fish §§ 14 et seq.

§ 49-15-11. Mississippi Department of Marine Resources; transfer of certain powers and duties from Department of Wildlife, Fisheries and Parks; Executive Director of the Department of Marine Resources; definition of terms.

(1) The Mississippi Department of Marine Resources is hereby established and full power is vested in the department to manage, control, supervise, enforce and direct any matters pertaining to saltwater aquatic life and marine resources under the jurisdiction of the commission. The Department of Wildlife, Fisheries and Parks shall transfer all powers, duties, employees, equipment, buildings, facilities, inventory and resources of the marine law enforcement division to the Department of Marine Resources.

(2) The Executive Director of the Department of Marine Resources shall have the authority to internally reorganize the Department of Marine Resources with persons meeting established qualifications for comparable positions of duty and responsibility including, but not limited to, the deputy director, division chiefs, biologists and other personnel. For a period of one (1) year after July 1, 1994, the personnel actions of the executive director shall be exempt from State Personnel Board rules, regulations and procedures in order to give the executive director flexibility in making an orderly, effective and timely reorganization of the Department of Marine Resources.

(3) Whenever the terms "Mississippi Marine Conservation Commission," "Marine Conservation Commission," "Bureau of Marine Resources" and "Mississippi Marine Resources Council" appear in any state law, they shall mean the "Mississippi Commission on Marine Resources."

SOURCES: Codes, 1942, § 6047-04; Laws, 1960, ch. 173, § 4; Laws, 1964, ch. 245, § 1; Laws, 1974, ch. 572, § 2; Laws, 1978, ch. 484, § 24; Laws, 1993, ch. 603, § 3; Laws, 1994, ch. 578, § 3; Laws, 1999, ch. 585, § 2, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The words "making an order, effective and timely reorganiztion" were changed to "making an orderly, effective and timely reorganization." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Gulf coast research laboratory, see § 37-101-21.
Powers and duties of director of State Board of Health, see § 41-3-49.
Mississippi Commission on Marine Resources, see §§ 49-15-301 et seq.
Control of air and water pollution, see §§ 49-17-1 et seq.
Cooperation with Marine Resources Council, see §§ 57-15-3 et seq.
Boat and water safety commission, see § 59-21-111.

ATTORNEY GENERAL OPINIONS

The only limits placed on the personnel decisions of the Marine Resources' Executive Director by Section 49-15-11(2) are that persons put into positions within the Department meet "established qualifications for comparable positions of duty and responsibility," that is, they be qualified to hold their positions. Woods, March 8, 1995, A.G. Op. #95-0089.

Any person dismissed from state employment pursuant to the authority granted the Marine Resources' Executive Director under Section 49-15-11(2) would be entitled only to that compensation and benefits previously accrued to him or her under existing state statutes. Woods, March 8, 1995, A.G. Op. #95-0089.

The Department of Marine Resources (DMR) had the authority to allow a retiring conservation officer to keep his sidearm where the officer in question had been employed with the Department of Wildlife, Fisheries and Parks for over 20 years before being transferred to the DMR. Woods, March 17, 2000, A.G. Op. #2000-0130.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26.

§ 49-15-12. Transfer of duties to comply with Sections 5-11-1 through 5-11-5; personnel actions; merit promotion system.

(1) The Department of Marine Resources and the Department of Wildlife, Fisheries and Parks shall comply with Sections 5-11-1 through 5-11-5 in the transfer of the marine law enforcement division.

(2)(a) All personnel actions initiated as a result of the transfer of law enforcement officers shall be subject to the State Personnel Board rules, regulations and procedures. The executive director shall implement a merit promotion system for all law enforcement officers. The merit promotion system shall be based on an individual's merit and length of service.

(b) The transfer of personnel shall be commensurate with the number and classification of positions (PINS) allocated to the Division of Marine Law Enforcement on January 1, 1999. The transfer shall also include direct support, clerical, data processing, communications and boating safety pins and resources.

SOURCES: Laws, 1999, ch. 585, § 3, eff from and after July 1, 1999.

Editor's Note — A former § 49-15-12 [En Laws, 1974, ch. 572, § 2] was repealed by Laws, 1978, ch. 484, § 26, eff from and after July 1. 1979. That section dealt with the director of marine conservation, his qualifications, appointment, term of office, removal from office, compensation and authority.

§ 49-15-13. Repealed.

Repealed by Laws of 2000, ch. 603, § 3, eff from and after May 20, 2000. [Codes, 1993, ch. 605, § 1; Laws, 1994, ch. 578, § 16; Laws, 1997, ch. 600, § 1, eff from and after July 1, 1997.]

Editor's Note — Former § 49-15-13 authorized the Department of Marine Resources to remove derelict vessels from coastal wetlands. For present similar provision, see § 49-27-71.

§ 49-15-15. Powers and duties of commission.

(1) In addition to any other powers and duties authorized by law, the commission shall have the following powers and duties regarding the regulation of seafood:

(a) To exercise full jurisdiction and authority over all marine aquatic life and to regulate any matters pertaining to seafood, including cultivated seafood;

(b) To adopt, promulgate, amend or repeal, after due notice and public hearing, in accordance with the Mississippi Administrative Procedures Law and subject to the limitations in subsection (2) of this section, rules and regulations authorized under this chapter, including, but not limited to, rules and regulations necessary for the protection, conservation or propagation of all seafood in the waters under the territorial jurisdiction of the State of Mississippi and for the regulation of gill net and purse seine fishermen. All public hearings under this chapter concerning the regulation of marine resources shall be held in Hancock, Harrison or Jackson counties. Each rule or regulation promulgated under this chapter shall immediately be advertised one (1) time in a newspaper or newspapers having general circulation in counties affected by that regulation. A regulation shall become effective at 6:00 a.m. on the day after its publication;

(c) To regulate all seafood sanitation and processing programs. In the three (3) coastal counties, the sanitation program regulating processing plants and seafood sold in retail stores operating in conjunction with a processing plant or seafood market that primarily deals with seafood is under the exclusive authority of the commission. The commission may also inspect and regulate those areas of any seafood processing plant which process freshwater species at any site where the department inspects seafood processing plants. To effectively and efficiently implement the state seafood sanitation program, the State Health Officer, the Commissioner of Agriculture and the executive director of the department may enter into a memorandum of understanding, which at a minimum, clearly specifies the responsibilities of each agency in implementing the seafood sanitation program, as well as the sharing of information and communication and coordination between the agencies;

(d) To set standards of measure;

(e) To set requirements for employment of commission employees whose compensation shall be governed by the rules and regulations of the State Personnel Board;

(f) To acquire and dispose of commission equipment and facilities;

(g) To keep proper records of the commission, including an official ordinance book which contains all rules and regulations promulgated by the commission under this chapter;

(h) To enter into advantageous interstate and intrastate agreements with proper officials, which directly or indirectly result in the protection, propagation and conservation of the seafood of the State of Mississippi, or continue any such agreements now in existence;

(i) To arrange, negotiate or contract for the use of available federal, state and local facilities which would aid in the propagation, protection and conservation of the seafood of the State of Mississippi;

(j) To authorize the operation of double rigs in the waters lying between the mainland coast and the island chain, and those rigs shall not exceed a length of twenty-five (25) feet at the cork line, and to prescribe the length at the lead line for each rig, net or try-trawl;

(k) To destroy or dispose of equipment or nets which have been lawfully seized by the commission and which are not sold under Section 49-15-201 et seq.;

(*l*) To open, close and regulate fishing seasons for the taking of shrimp, oysters, fish taken for commercial purposes and crabs and set size, catching and taking regulations for all types of seafood and culling regulations for oysters, except as otherwise specifically provided by law;

(m) To utilize the resources of the Gulf Coast Research Laboratory to the fullest extent possible;

(n) To develop a resource management plan to preserve seafood resources and to ensure a safe supply of these resources;

(o) To prescribe types and forms of scientific permits for public educational or scientific institutions, federal and state agencies and consultants performing marine resource studies;

(p) To suspend the issuance of licenses when necessary to impose a moratorium to conserve a fishery resource; and

(q) To promote, construct, monitor and maintain artificial fishing reefs in the marine waters of the State of Mississippi and in adjacent federal waters; to accept grants and donations of money or materials from public and private sources for such reefs; to set permit fees and establish guidelines for the construction of artificial reefs in federal waters; and to apply for any federal permits necessary for the construction or maintenance of artificial fishing reefs in federal waters. The location data associated with artificial reefs by corporations and private individuals shall not be published by the commission or the department on the Web site or in written publications of the department. Location data of the artificial reefs may be requested in writing by any individual and shall be provided by the Department of Marine Resources in a timely manner.

(2) The commission shall not adopt rules, regulations or ordinances pertaining to marine resources which are more stringent than federal regulations. In any case where federal laws and regulations are silent on a matter pertaining to marine resources, the laws and regulations of the State of Mississippi shall control. The commission shall review all marine resource ordinances for compliance with the no more stringent standard and revise any ordinances more stringent than this standard no later than December 31, 1992. This subsection shall not apply to rules, regulations or ordinances pertaining to the wild stock of marine fin fish.

SOURCES: Codes, 1942, § 6047-06; Laws, 1960, ch. 173, § 6; Laws, 1962, ch. 193, § 9; Laws, 1974, ch. 572, § 4; Laws, 1975, ch. 321, § 1; Laws, 1978, ch. 497, § 1; Laws, 1980, ch. 380; Laws, 1981, ch. 537, § 1; Laws, 1982, ch. 446, § 2; Laws, 1985, ch. 512, § 2; Laws, 1987, ch. 521, § 1; Laws, 1988, ch. 395, § 1; Laws, 1989, ch. 562, § 1; Laws, 1991, ch. 564, § 1; Laws, 1992, ch. 355, § 1; Laws, 1992, ch. 544, § 1; Laws, 1993, ch. 521, § 1; Laws, 1994, ch. 578, § 50; Laws, 1995, ch. 611, § 1; Laws, 1996, ch. 499, § 1; Laws, 1997, ch. 353, § 1; Laws, 1997, ch. 579, § 18; Laws, 1999, ch. 558, § 1; Laws, 2000, ch. 557, § 1; Laws, 2009, ch. 495, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 353, Laws, 1997, amended this section, effective July 1, 1997. Section 18 of ch. 579, Laws, 1997, effective July 2, 1997, also amended this section. As set out above, this section reflects the language of Section 18 of ch. 579, Laws, 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

This code section was also amended by Section 1 of ch. 395, Laws of 1997, effective December 17, 1997. Sections 1 and 2 of ch. 395, Laws of 1997, were subsequently repealed by Section 27 of ch. 579, Laws of 1997, effective July 2, 1997.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in paragraphs (k) and (m) of subsection (1). In (1)(k), the words 'not sold under to Section 49-15-65" were changed to 'not sold under Section 49-15-65" and in (1)(m), the words 'to the fullest extend possible" were changed to 'to the fullest extent possible". The Joint Committee ratified the corrections at its May 20, 1998 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "Section 49-15-64" at the end of (1)(k) was changed to read

"Section 49-15-201 et seq." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Provisions governing the exercise of the power of eminent domain generally, see §§ 11-27-1 et seq.

State personnel system generally, see §§ 25-9-101 et seq.

Executive officer of State Board of Health to be State Health Officer, see § 41-3-5.

Definition of natural and tonging reefs, see § 49-15-3.

Declaration that oyster shells are state property, see § 49-15-7.

Authority of the commission to authorize other persons to issue certain licenses and collect fees, see § 49-15-29.

Annual license fee for boats engaged in certain operations, see § 49-15-29.

Applicability of this section to taking of oysters from contaminated seed areas or private lease grounds, replanting of oysters from reefs with unsafe and unsanitary waters to approved areas, sale of re-layed oysters, and return of oyster shells from depuration facilities, see § 49-15-37.

Authority of the Commission on Marine Resources with respect to redfish, etc., see §§ 49-15-71 et seq.

Definitions of special units of measure, see § 75-27-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The authority conferred does not extend to the sale of reef shells or cay shells from tidewater bottoms. Parks v. Simpson, 242 Miss. 894, 137 So. 2d 136 (1962).

ATTORNEY GENERAL OPINIONS

Where specific statutory authorization has been conferred upon Commission on Wildlife, Fisheries and Parks to regulate gill net fishing, Hancock County Board of Supervisors is without jurisdiction or authority to adopt ordinance regulating same. Gex, May 1, 1990, A.G. Op. #90-0250.

The Commission on Marine Resources does not have the authority to establish criminal penalties under the Seafood Chapter of the Mississippi Code for violations of its ordinances. Gusa, November 20, 1998, A.G. Op. #98-0692.

The statute does not give the Department of Agriculture and Commerce responsibility over retail seafood sanitation. Spell, Jr., Nov. 2, 2001, A.G. Op. #01-0608.

The statute grants the Mississippi Commission on Marine Resources regulatory authority over retail seafood sanitation and processing programs in the state. Spell, Jr., Nov. 2, 2001, A.G. Op. #01-0608.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 31, 40.

CJS. 36A C.J.S., Fish §§ 24-26, 40.

§ 49-15-16. Limited entry fisheries management program.

The commission may develop a limited entry fisheries management program for all resource groups. The commission may require a license for each resource group and shall establish the fees for such licenses. The commission may establish a means test or any other criteria to determine eligibility for licenses under the limited entry program. The commission may impose a moratorium on the issuance of licenses for a fishery resource.

SOURCES: Laws, 1996, ch. 499, § 2; Laws, 1999, ch. 558, § 2, eff from and after passage (approved Apr. 21, 1999.)

§ 49-15-17. Seafood Fund; special accounts; sources of funds.

(1)(a) All monies received or obtained by the commission under the provisions of this chapter shall be paid over by the commission to the State Treasurer and shall be deposited into the fund known as the "Seafood Fund." All revenues collected through the department, to include, but not limited to, commercial saltwater licenses and taxes, permits, fines and penalties, and confiscated catches, shall be deposited into the department operating account (Seafood Fund) and expended for the operation of the department, as authorized by the Legislature.

(b) There is established a special account to be known as the "Artificial Reef Program Account" within the Seafood Fund. Any funds received from any public or private source for the purpose of promoting, constructing, monitoring or maintaining artificial reefs in the marine waters of the state or in federal waters adjacent to the marine waters of the state shall be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year shall not lapse into the Seafood Fund, but shall remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, to accomplish the purpose of the account.

(c) There is established a special account to be known as the "Coastal Preserve Account" within the Seafood Fund. Any funds received from any public or private source for the purpose of management, improvement and acquisition of coastal preserves in the state and money required to be deposited pursuant to Sections 27-19-56.10 and 27-19-56.27, shall be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year shall not lapse into the Seafood Fund, but shall remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, for the management, improvement and acquisition of coastal preserves.

(d) There is established a special account to be known as the "Mississippi Seafood Marketing Program Account" within the Seafood Fund. Monies required to be deposited into the account under Section 27-19-56.27 and any funds received from any public or private source for the purpose of promoting the Mississippi seafood industry must be credited to the account. Any unexpended funds remaining in the account at the end of the fiscal year do not lapse into the Seafood Fund, but remain in the account. The department may expend any funds in the account, subject to appropriation by the Legislature, to accomplish the purposes of this account.

(2) The fund shall be treated as a special trust fund and interest earned on the principal shall be credited to the fund.

(3) The secretary of the commission shall keep accurate reports of monies handled as a part of the permanent records of the commission, and the State Treasurer shall furnish the secretary of the commission such forms as may be needed, and the secretary shall account for such forms in his reports to the Treasurer.

SOURCES: Laws, 1994, ch. 578, § 14; Laws, 1999, ch. 558, § 3; Laws, 2000, ch. 536, § 18; Laws, 2003, ch. 529, § 20; Laws, 2005, ch. 532, § 3; Laws, 2011, ch. 523, § 46, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — A former § 49-15-17 [Codes, 1942, § 6047-07; Laws, 1960, ch. 173, § 7; Am, 1974, ch. 572, § 5; Repealed by Laws, 1978, ch. 848, § 26, eff from and after July 1, 1979] provided for payment of expenses of the commission and the disposition of monies.

Amendment Notes — The 2011 amendment deleted "and monies required to be disbursed to the account pursuant to Section 27-19-56.27" preceding "shall be credited to the account" at the end of the first sentence in (1)(b); and added (d).

Cross References — Proceeds from special license tags or plates deposited into Coastal Preserve Account in the Seafood Fund, see § 27-19-56.27.

Commercial salt water licenses, see § 49-15-313.

Deposit of fees and sums collected under the Coastal Wetlands Protection Act into Seafood Fund, see § 49-27-69.

§ 49-15-18. Distribution of chapter.

The executive director of the department shall publish an abstract copy of this chapter and all subsequent amendments to this chapter and all rules and regulations promulgated by the commission under this chapter. The department may distribute the publication to all persons requesting a copy and to each licensee at the time of issuance of the license. New regulations and amendments to this chapter may be supplied to each licensee within a reasonable time after their promulgation or passage. The department may charge a reasonable fee not to exceed actual cost for its publications.

SOURCES: Laws, 1997, ch. 579, § 1, eff from and after July 2, 1997.

§ 49-15-19. Attorney General; designation of deputies or assistants; legal advisors to commission and department.

The Attorney General shall be counsel and attorney for the commission and department and shall provide legal services as may be requested. The executive director is authorized to employ legal counsel, after consultation with the Attorney General, as may be necessary or appropriate for the operation of the department.

SOURCES: Laws, 1994, ch. 578, § 15; Laws, 1998, ch. 395, § 1; Laws, 1999, ch. 574, § 1; Laws, 2000, ch. 383, § 1, eff from and after passage (approved Apr. 17, 2000.)

Editor's Note — Former § 49-15-19 [Codes, 1942, § 6047-08; Laws, 1960, ch. 173, § 8; 1970, ch. 300, § 1; Am 1974, ch. 572, § 6]; Repealed by Laws, 1978, ch. 848, § 26, eff from and after July 1, 1979, required annual reports to the governor and legislature by the commission.

Cross References — Mississippi Commission on Marine Resources, see §§ 49-15-301 et seq.

§ 49-15-21. Enforcement officers; reserve unit.

(1) The executive director shall appoint the necessary enforcement officers for the administration of this chapter. The salary of all enforcement officers employed shall be as determined by the State Personnel Board. However, the members of the Enforcement Officers' Reserve Unit created in subsection (4) shall serve without pay, and shall not be employees of the State of Mississippi for purposes of the State Personnel System, the Workers' Compensation Law, the Public Employees' Retirement System or the State Employees' Life and Health Insurance Plan.

(2) All enforcement officers shall be experienced and qualified persons thoroughly familiar with the seafood business and shall be at least twenty-one (21) years of age and be a high school graduate or its equivalent. The enforcement officers shall diligently enforce all laws and regulations for the protection, propagation, preservation or conservation of all saltwater aquatic life of the State of Mississippi, and they are hereby constituted peace officers of the State of Mississippi, with full police power and jurisdiction to enforce all laws of the State of Mississippi and all regulations adopted and promulgated by the commission. Enforcement officers may exercise such powers in any county of the State of Mississippi and on any waters of the state, and they are hereby authorized to carry firearms or other weapons, concealed or otherwise, and they shall investigate all persons, corporations and otherwise who are alleged to have violated any laws, and make affidavits, arrests and serve papers of any court of competent jurisdiction, in like manner as is provided for sheriffs and deputy sheriffs, when the same shall be in connection with the enforcement of the seafood laws of the State of Mississippi and such other laws and regulations of this state as the commission may designate. The enforcement officers may seize at any time aquatic life caught, taken or transported in a manner contrary to the laws of this state, and may confiscate and dispose of the same. Any net or other paraphernalia used or employed in connection with a violation may be seized, and forfeiture proceedings may be instituted. Enforcement officers may draft the aid of captains, crews and boats or licensed vessels to enforce this chapter and may, without warrant, board and search vessels or vehicles. The application for any license or permit from the commission to catch, fish, take, transport or handle or process any form of aquatic life, or the taking, catching, transporting or handling or processing of any and all aquatic life in this state shall constitute acquiescence and agreement upon the part of the owners, captains and crews, employers and dealers to the provisions of this chapter and the agreement that enforcement officers may exercise the authority granted under the provisions hereof.

(3) Prior to entering into performance of their duties or delegations or as soon after appointment as possible, each enforcement officer, at the expense of

the commission, shall attend and complete an appropriate curriculum in the field of law enforcement at the Mississippi Law Enforcement Officers' Training Academy or other law enforcement training program approved under Section 45-6-7. However, members of the Enforcement Officers' Reserve Unit created in subsection (4) of this section may attend the Mississippi Law Enforcement Officers' Training Academy at the expense of the commission if it deems the training necessary or desirable. No enforcement officer shall be entitled to payment of salary after the first six (6) months in office if he has either failed to attend the academy or has failed to comply with other qualifications or successfully complete any law enforcement qualification examinations as the director deems necessary. The enforcement officers shall, on a periodic basis, be required to attend additional advanced courses in law enforcement in order that they will be properly improved and trained in the modern, technical advances of law enforcement.

(4)(a) There is hereby created an Enforcement Officers' Reserve Unit, hereinafter termed the reserve, to assist the enforcement officers in the performance of their duties under this chapter. The reserve shall consist of volunteers who are approved by the Executive Director of the Department of Marine Resources, or his designee. The members of the reserve shall serve without pay. Reserve officers shall be in such numbers as determined by the enforcement needs, with the maximum strength of reserve officers limited to the same number as enforcement officers.

(b) To be eligible for membership in the reserve, an applicant must be twenty-one (21) years of age, be a high school graduate or its equivalent, be in good physical condition, have a Mississippi driver's license, be in good standing with the community, be available for training and duty, not be a member of any police, auxiliary police, civil defense, or private security agency, have never been convicted of a felony, and have one (1) of the following:

(i) An honorable discharge or honorable separation certificate from one (1) of the United States military services;

(ii) Three (3) years of responsible post-high school work experience that required the ability to deal effectively with individuals and groups of persons;

(iii) Successful completion of sixty (60) semester hours at an accredited college or university; or

(iv) The qualifications as are outlined in this section for enforcement officers.

Members of the immediate family of enforcement officers shall not be eligible for the reserve unless a special waiver is granted.

Upon acceptance into the reserve, members shall receive a temporary appointment for one (1) year. During this year of temporary status, members must successfully complete the required training and must qualify on the same firearms course as enforcement officers.

(c) The reserve shall be under the leadership and direction of the executive director, or his designee. The training of the reserve shall be conducted by an enforcement officer. The reserve shall meet at least once each month for the purpose of training and transacting any business as may come before it. The executive director shall be notified in writing of all meetings of the reserve and the time and place of the meetings shall be recorded with the executive director. The executive director shall prepare a reserve officer's manual with the advice and consent of the commission. The manual shall include, but is not limited to, the following: activities and operations, training, administration and duties. During active service, the reserve shall be under the direction of the executive director, or his designated representative. When a reserve officer is on active duty and assigned to a specific enforcement officer, he shall be under the direct supervision of that officer. Reserve officers serve at the discretion of the executive director and may be dismissed by him. Reserve officers shall furnish their own uniforms and other personal equipment if the executive director does not provide such items.

(d) The executive director may require members of the Enforcement Officers' Reserve Unit to attend officer reserve training programs conducted by county or municipal agencies.

(e) The executive director may issue uniforms to such reserve officers and may authorize the issuance of any state equipment necessary for the reserve officers to adequately assist law enforcement officers. The executive director may develop a reserve officer identification system to accomplish the issuance of such items in accordance with the State Auditor guidelines.

(f) If the executive director determines that a member of the Enforcement Officers' Reserve Unit may attend a training program as authorized under this section, it shall require that reserve officer to sign an agreement, prior to attending a training program, which shall stipulate that if the reserve officer accepts employment from any other public or private law enforcement agency within three (3) years after completion of his training program, the reserve officer or the respective hiring law enforcement agency shall reimburse the department for the total cost of his training program. By October 1 of each year, the department shall provide the Conservation and Water Resources Committee of the Mississippi House of Representatives and the Ports and Marine Resources Committee of the Mississippi Senate a listing which contains each name and the respective cost of training each reserve officer received during the previous year.

SOURCES: Prior 1972 Code § 49-15-21 [Codes, 1942, § 6047-09; Laws, 1960, ch. 173, § 9; Laws, 1966, ch. 278, § 1; Am, 1974, ch. 542, § 7] repealed by Laws, 1978, ch. 484, § 26. Former § 49-15-21 [En, 1980, ch. 553, § 4; Am, 1985, ch. 382, § 1] repealed by Laws, 1985, ch. 382, § 2. New § 49-15-21 enacted, Laws, 1989, ch. 562, § 2; Laws, 1990, ch. 577, § 1; Laws, 1991, ch. 522, § 4; Laws, 1993, ch. 532, § 1; Laws, 1994, ch. 578, § 18; Laws, 1997, ch. 362, § 1; Laws, 1999, ch. 585, § 4; Laws, 2002, ch. 376, § 1, eff from and after passage (approved Mar. 18, 2002.)

Editor's Note — Section 7-7-2 provides that the words 'State Auditor of Public Accounts,' 'State Auditor' and 'Auditor' appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

A former § 49-15-21, dealing with employees of the commission, amended by Laws of 1974, ch. 572, § 7, was repealed by Laws of 1978, ch. 484, § 26.

A former § 49-15-21, enacted by Laws of 1980, ch. 553, § 4, as amended by Laws of 1985, ch. 382, and repealed effective from and after July 1, 1987, provided for the appointment, qualifications and training of enforcement officers, and for the establishment of a reserve unit.

Cross References — Conservation Officers' Reserve Unit, see § 49-1-16.

Procedure for forfeiture of property seized for violation of fish and game laws, see §§ 49-7-251 et seq.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]
6. Under former law.

1-5. [Reserved for future use.]

6. Under former law.

An assistant chief inspector of the Mississippi Marine Conservation Commission whose appointment was never submitted to or confirmed by the Senate as required by statute, was at most a de facto officer for the two years he worked for the Commission in that capacity, and when he was discharged by an order of the Commission, the Commission merely terminated the de facto status which required no action by the Governor or any hearing to remove the officer from an office he did not validly hold. Mississippi Marine Conservation Comm'n v. Misko, 347 So. 2d 355 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

Section 49-15-21 makes application for license from Bureau of Marine Resources an agreement to be searched by agents of that Bureau but acquiescence does not extend to other officers such as deputies. McClendon, March 24, 1994, A.G. Op. #94-0136.

§ 49-15-22. Marine patrol officers of Department of Marine Resources permitted to keep side arm upon retirement.

Each person employed as a marine patrol officer by the Mississippi Department of Marine Resources who retires for superannuation or for reason of disability under the Public Employees' Retirement System may, upon his request, be allowed to retain, as his personal property, one (1) side arm which was issued to him during his service, if funds are available for this purpose.

SOURCES: Laws, 2002, ch. 376, § 2, eff from and after passage (approved Mar. 18, 2002.)

Cross References — Public Employees' Retirement System, see Articles 1 and 3 of Chapter 11 of Title 25, §§ 25-11-1 et seq.

Retiring members of Mississippi Highway Safety Patrol and retiring agents of Mississippi Bureau of Narcotics permitted to retain side arm, see § 45-3-51.

Retiring sworn law enforcement officer employed by Commission on Wildlife, Fisheries and Parks authorized to retain side arm, see § 49-1-14.

§ 49-15-23. Establishment of dividing line between salt and fresh waters; notice.

(1)(a) The Mississippi Commission on Marine Resources and the Commission on Wildlife, Fisheries and Parks are hereby authorized and empowered to establish the dividing line between salt and fresh waters, and when such line has been established and notice thereof given as provided herein, it shall be recognized in the courts in connection with any proceedings under the game and fish laws of this state. Such line may be changed from time to time by the Mississippi Commission on Marine Resources and the Commission on Wildlife, Fisheries and Parks on proper publication of such changes.

(b) In establishing the dividing line between salt and fresh waters, no part of the Bay of St. Louis shall be declared to be fresh water.

(c) In establishing the dividing line between salt and fresh waters, none of the waters within the municipal boundaries of the City of Pascagoula, as they existed on January 1, 1981, shall be declared to be fresh water.

(d) In establishing the dividing line between salt and fresh waters, no part of Bayou Cassotte and its tributaries, Bang Bayou and its tributaries, Bayou Cumbest and its tributaries, Crooked Bayou, Middle Bayou and that part of Heron Bayou with its tributaries which lie in the State of Mississippi shall be declared to be fresh water.

(2) Whenever any dividing line is established or changed as above provided, notice shall be given to the public by publication for three (3) weeks in a newspaper published and having general circulation in the county or counties affected thereby, and a description of the dividing line shall be filed in the office of the chancery clerk of such counties or county.

SOURCES: Codes, 1942, § 6051.5; Laws, 1954, ch. 191, §§ 1, 2; Laws, 1958, ch. 195, § 6; Laws, 1971, ch. 454, § 1; Laws, 1981, ch. 454, § 1; Laws, 1989, ch. 417, § 1; Laws, 1994, ch. 578, § 17, eff from and after July 1, 1994.

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources can not unilaterally set the boundary of marine waters in Mississippi. Further, the boundary of marine waters should be established in accordance with Section 49-15-23. Woods, July 27, 1995, A.G. Op. #95-0420.

§ 49-15-25. Advisory council may be appointed by commission.

The commission may appoint an advisory council of persons who may fairly be regarded as representative of all the various segments of the industry. This council shall aid the commission in formulating policies and discussing problems related to the administration of this chapter and the advancement and protection of the industry.

SOURCES: Codes, 1942, § 6047-14; Laws, 1960, ch. 173, § 14, eff from and after passage (approved March 23, 1960).

§ 49-15-27. Commission granted authority to lease bottoms.

The commission is hereby granted full and complete authority to lease the bottoms within its jurisdiction upon the following terms and conditions:

(1) All areas within the commission's jurisdiction, not designated tonging reefs by this chapter, or hereinafter designated tonging reefs by the commission; all areas not designated natural reefs by the commission, and all areas not within the boundaries of riparian property owners may be leased by the commission.

(2) All individual lessees shall be residents of the State of Mississippi, or if a firm or corporation, such firm or corporation shall be organized under the laws of the State of Mississippi.

(3) No individual, corporation, partnership or association may lease less than five (5) acres nor more than one hundred (100) acres; provided, however, that in the case of an individual there shall not be counted towards such limitation any lands leased by a corporation, partnership or association in which such individual owns ten percent (10%) or less interest and, in the case of a corporation, partnership or association, there shall not be counted toward such limitation any lands leased by an individual stockholder, partner or associate thereof who owns ten percent (10%) or less interest in such corporation, partnership or association.

(4) Individuals, firms or corporations desiring to lease bottoms shall make application to the commission in writing, describing the area to be leased, and the price proposed to be paid therefor.

(5) The commission shall consider such applications in the order in which each is filed and may award, within sixty (60) days, a lease to the area described in the application upon payment of the rent in advance.

(6) Such leases shall be for a term of one (1) year, with the right of lessee to renew the lease of an additional year, and from year to year, at the same ground rental so long as lessee actively cultivates and gathers oysters, and complies with the provisions of this chapter, provided that no lease shall be renewed for more than twenty-five (25) years total. No lease may be transferred without approval by the commission of the transfer.

(7) The commission shall fix a ground rental at not less than Five Dollars ($5.00) per acre.

(8) The commission shall keep an accurate chart of the areas within its jurisdiction and shall mark on such chart those areas which are under lease. All leases shall be marked by appropriate poles, stakes or buoys of such material as will not injure watercraft, at the expense of the leaseholder. The commission shall keep an accurate book, designated "Mississippi Oyster Farms" which shall contain copies of all leases. If any lease be cancelled or expire, such fact shall be noted on the face of such lease. Lessees shall be "oyster farmers" for the purposes of any grants, aid, subsidies or other assistance from the federal government or other governmental or private agencies.

(9) All funds derived from leasing shall be paid into the Seafood Fund under 49-15-17, for use by the commission to further oyster production in this state, which includes plantings of oysters and cultch materials.

(10) All leases made by the commission under the authority of this section shall be subject to the paramount right of the state and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice fixed by the commission in such lease. On the termination of any lease, the lessees shall have the right to remove any oysters within the leased area within such time as may be fixed by the commission and in accordance with such reasonable rules and regulations as the commission may adopt.

Any person convicted of taking oysters from leased land or from waters that are not of a safe sanitary quality without a permit as provided in Section 49-15-37 shall, on the first offense, forfeit all equipment used, exclusive of any boat or boats; and be fined not to exceed two thousand dollars ($2,000.00) or sentenced not to exceed one (1) year in the county jail, or both. Subsequent convictions shall be punishable by forfeiture of all equipment, including any boat or boats; and a fine not to exceed five thousand dollars ($5,000.00) or not to exceed two (2) years in prison, or both such fine and imprisonment.

No lease of any area shall be made unless and until the commission shall have given at least fifteen (15) days' public notice of its intention to lease such area, such notice to be given by publication in a newspaper of general circulation in such county.

The commission is enjoined to cooperate with the Jackson County Port Authority, the Harrison County Development Commission, the municipal port commission and other port and harbor agencies, so that oyster beds shall not be planted in close proximity to navigable channels. The commission or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation or other purpose authorized by law.

SOURCES: Codes, 1942, § 6047-11; Laws, 1960, ch. 173, § 11; Laws, 1977, ch. 463, § 1; Laws, 2005, ch. 343, § 1, eff from and after passage (approved Mar. 14, 2005.)

Cross References — Areas designated as tonging reefs, see §§ 49-15-3, 49-15-39.

Oysters caught under this section excepted from definition of "illegal oysters," see § 49-15-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
This section [Code 1942, § 6047-11] does not authorize the commission to sell the reef or cay shells in Mississippi Sound. Parks v. Simpson, 242 Miss. 894, 137 So. 2d 136 (1962).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 31.

CJS. 36A C.J.S., Fish §§ 24-26, 40.

§ 49-15-28. Combination seafood dealer and processor license; fees.

(1) Each person buying or handling seafood secured from commercial fishermen, or from other wholesale dealers, for the purpose of resale, whether handling on a commission basis or otherwise, and every resident person shipping seafood out of the State of Mississippi on consignment or order, except fishermen shipping their own catch, shall be considered a wholesale dealer.

(2) Any factory or person engaged in the canning, processing, freezing, drying or shipping of oysters, fish, saltwater crabs or saltwater shrimp shall be considered a seafood processor.

(3)(a) Any person operating as a wholesale dealer, retail dealer or processor of seafood shall obtain an annual combination dealer and processor license for a fee of One Hundred Dollars ($100.00).

(b) The license shall be nontransferable and a license shall be required for each factory or place of business.

(c) The combination license shall entitle the licensee to operate as a wholesale dealer, retail dealer and processor.

(4) It is unlawful for any factory or person to engage in the canning, processing, freezing, drying or shipping of oysters, fish, saltwater crabs or saltwater shrimp without first having obtained that license.

(5) This section shall not apply to a dealer in fresh seafoods who merely preserves the seafood for future sale to prevent spoilage and is in competition with other retailers who are not required to pay this tax.

SOURCES: Laws, 1997, ch. 579, § 2; Laws, 2007, ch. 330, § 1, eff from and after passage (approved Mar. 13, 2007.)

§ 49-15-29. Taxes and license fees to be collected by the commission.

(1) The commission shall assess and collect license fees and taxes as authorized under this chapter.

(2) All commercial licenses provided for under this chapter that relate to seafood shall be purchased from May 1 through April 30 at the fees provided in this chapter. The licenses shall expire on April 30 following the date of issuance.

(3) When an application for an original or renewal license of any kind authorized by this chapter is received by the commission, the commission shall determine whether the vessel or related equipment subject to that license is owned and operated in compliance with applicable federal and state laws. If the commission determines that a vessel or its owner is not in compliance with applicable federal and state laws, then no license shall be issued or renewed for the operation of that vessel for a period of one (1) year. All licenses shall be made available for purchase at any building which is regularly operated by the department or commission on the Mississippi Gulf Coast.

(4) The commission may authorize any person, other than a salaried employee of the state to issue any license under this chapter which the commission deems appropriate. The authorized person may collect and retain for issuance of the license the sum of One Dollar ($1.00) in addition to the license fee provided in this chapter. The commission shall establish the qualifications of persons authorized to issue licenses under this section and shall also establish the procedure for the issuance of that license by the authorized person and the procedure for collection of license fees by and from the authorized person.

(5) The commission may design, establish, and administer a program to provide for the purchase, by electronic means, of any license, permit, registration or reservation issued by the commission or department. Any actual costs associated to provide these documents electronically may be added to the cost of the electronic program.

SOURCES: Codes, 1942, § 6047-18; Laws, 1960, ch. 173, § 18; Laws, 1975, ch. 321, § 2; Laws, 1977, ch. 463, § 2; Laws, 1980, ch. 361; Laws, 1982, ch. 446, § 3; Laws, 1984, ch. 513; Laws, 1985, ch. 512, § 1; Laws, 1986, ch. 408, § 1; Laws, 1988, ch. 395, § 2; Laws, 1988, ch. 398; Laws, 1991, ch. 564, § 2; Laws, 1992, ch. 550, § 2; Laws, 1993, ch. 603, § 2; Laws, 1994, ch. 578, § 51; Laws, 1994 Ex Sess, ch. 28, § 1; Laws, 1997, ch. 579, § 19; Laws, 1999, ch. 519, § 1; Laws, 2003, ch. 389, § 1, eff from and after July 1, 2003.

Editor's Note — Laws of 1992, ch. 550, § 1, effective from and after July 1, 1992, provides as follows:

"SECTION 1. The Legislature finds that:

(a) Live bait fishery is essential to the recreational fishing and tourist industry in Mississippi;.

(b) To protect and preserve our valuable shrimp resources, certain waters of the state have been closed to commercial shrimping activities;.

(c) To further protect the population of shrimp resources, the amount of live bait shrimp harvested from those waters closed to commercial shrimping must be limited; and

(d) A limit on the amount of live bait shrimp sold to a person per day is vital to the effective management and preservation of this natural resource."

Cross References — Other powers and duties of the marine resources commission, see § 49-15-15.

ATTORNEY GENERAL OPINIONS

For purpose of determining and assessing proper license fee, "charter boats", "party boats" and "commercial hook and line fishing" boats are all subject to same licensing requirement; however, this does not necessarily mean that charter boats and party boats will be considered "commercial vessels" for any other purpose. Gill, Nov. 8, 1990, A.G. Op. #90-0668.

The language under Section 49-15-29(1) is not sufficient to indicate a legislative intention that the Commission have the power to set restrictions and provisions concerning the issuance of licenses greater than those set by the Legislature. Woods, March 11, 1996, A.G. Op. #96-0143.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 31, 47.

CJS. 36A C.J.S., Fish §§ 24-26, 28.

§ 49-15-30. Commission may promulgate regulations for nonresident permits, reciprocity; penalties.

(1) The commission may promulgate rules and regulations for nonresident permits in order to promote reciprocal agreements with other states.

(2) The commission shall provide that residents of other states bordering on the Gulf of Mexico who are applicants for a commercial fishing license of any type as provided for in this chapter shall pay the same fee or fees that a resident of this state pays in this state for that license if the respective applicant's domicile state does not charge a greater fee or fees for a Mississippi resident than for a resident of any other state to engage in a like activity in the other state. If the applicant's domicile state does charge a greater fee or fees for residents of Mississippi than for a resident of the applicant's domicile state, then that applicant shall pay the same fee or fees that the applicant's domicile state charges residents of Mississippi.

(3) The commission shall require a nonresident to purchase the same type and number of licenses and pay the same fees that are required of Mississippi residents to engage in like activity in the nonresident's state.

(4) If an applicant applies for a nonresident commercial fishing license to engage in a certain activity and the applicant's state does not issue a nonresident commercial fishing license for that activity, then the commission shall not issue such license to the applicant.

(5) Any nonresident who engages in the commercial taking of seafood within the territorial waters of Mississippi without having the required nonresident commercial license is guilty of a misdemeanor and shall be fined Five Thousand Dollars ($5,000.00) and shall forfeit any equipment, gear or nets used in the offense.

SOURCES: Laws, 1974, ch. 572, § 9; Laws, 1997, ch. 579, § 20; Laws, 1998, ch. 512, § 1, eff from and after passage (approved March 31, 1998).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

These provisions apply only in cases where the foreign state carries out discriminatory practices toward Mississippi residents; thus, such provisions would not apply in instances wherein Mississippi residents receive equal treatment with the residents of the other state, even when Mississippi residents cannot carry out the same activities in the waters of the other state as residents of such state can carry out in Mississippi waters; the event which brings the amendments into play is not the prohibition by another state of an activity by Mississippi residents which they could carry out in Mississippi waters, but the prohibition of an activity in the waters of another state by Mississippi residents which is permitted to residents of that state. Mitchell, May 6, 1998, A.G. Op. #98-0263.

§ 49-15-31. Commission to maintain and operate patrol stations, camps and related facilities; reciprocity.

(1) The commission may construct, maintain and operate all patrol stations, camps and related facilities as may be deemed necessary by the commission.

(2) If a regulatory agency of a foreign state establishes a station or checkpoint through which Mississippi residents must pass for license, permit or catch inspection, or otherwise, the department shall establish similar stations or checkpoints through which residents of the foreign states shall be required to pass.

SOURCES: Codes, 1942, § 6051.7; Laws, 1955, Ex. Sess., ch. 121, §§ 1-4; Laws, 1958, ch. 195, § 7; Laws, 1997, ch. 579, § 21, eff from and after July 2, 1997.

§ 49-15-33. Repealed.

Repealed by Laws of 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

[Codes, 1942, § 6051.9; Laws, 1956, ch. 165; Laws, 1958, ch. 195, § 8]

Editor's Note — Former § 49-15-33 authorized the commission to contract for use of services and facilities of the gulf coast research laboratory.

§ 49-15-34. Boats used in other states; license and fee requirements; transport permits.

(1) The commission shall require all boats used under regulation of this chapter which are also used in waters of other states and required by those states to pay licenses or fees for the same purposes as licenses and fees are required under this chapter to purchase a license which reflects that the licensed boats are used inside and outside the territorial waters of Mississippi. Upon the issuance of that license, the licensed boat, if used exclusively for commercial fishing or charter boats which have been licensed and authorized by the United States Coast Guard under 46 CFR Sections 24-26 and 46 CFR Sections 175-187, shall be deemed to be in the business of interstate transportation, but this shall in no way affect the collection of other licenses and fees by

the commission which would otherwise be due under this chapter. The commission shall assess and collect an annual license fee of Twenty Dollars ($20.00) on each boat engaged in operations under this subsection.

(2) Notwithstanding the provisions of this chapter, the commission shall establish a transport permit to land seafood in this state which is legally taken outside of the Mississippi territorial waters without obtaining a license under this chapter. The commission by regulation shall require the registration of those landings. The commission may establish a permit fee in an amount not to exceed the amount of the license fee established in Section 49-15-28(1). This subsection shall not be construed to supersede Section 49-15-71.

SOURCES: Laws, 1997, ch. 579, § 3; Laws, 1999, ch. 519, § 2, eff from and after July 1, 1999.

§ 49-15-35. Authority to regulate taking and catching of menhaden.

Upon the request of the boards of supervisors of the respective coastal counties, the commission may adopt ordinances prohibiting the taking and catching of menhaden within certain limits of the coast line of the county so requesting, but the commission shall not fix such limits except upon request of the board of supervisors, and such limit shall not exceed two (2) miles from the shore line, or two (2) miles from the corporate limit boundaries of any municipality bordering on the Mississippi Sound.

SOURCES: Codes, 1942, § 6047-17; Laws, 1960, ch. 173, § 17, eff from and after passage (approved March 23, 1960).

§ 49-15-36. Oyster reefs and bottoms; rotating opening; closing of oyster reefs; special permits for taking oysters during closed season; depuration.

(1) The commission shall have full jurisdiction and control of all public and natural oyster reefs and oyster bottoms of the State of Mississippi. The commission may delegate this authority to the executive director of the department.

(2) Public reefs may be opened for harvest of oysters during the season on a rotating basis. If the commission determines that a particular reef has been over-harvested or that a high percentage of sublegal size oysters exist on a particular reef and that harvest could damage future oyster crops, the commission may close designated reef areas and keep them closed during the season.

(3) The commission shall promulgate regulations regarding the closing of oyster reefs to protect the public health. The waters of reefs closed under this chapter shall be tested between five (5) and ten (10) days after closure. When that testing indicates the oysters on the closed reef are suitable for consumption, the reef shall be opened for the taking of oysters as soon as notice of that opening may be made to interested parties. The authority to open or close

oyster reefs under this chapter shall be solely within the discretion of the commission, acting through the department. The Gulf Coast Research Laboratory or other certified laboratory shall cooperate with the department and shall conduct necessary tests to determine the condition of oyster reefs at the request of the department. The department may limit the sale of oysters for human consumption, but all matters concerning the harvesting of oysters shall be within the jurisdiction of the commission.

(4)(a) The commission may issue special permits for the purpose of catching oysters outside the open season or in areas not normally open to harvest to those nonprofit organizations that are tax exempt under Section 501(c) of the United States Internal Revenue Code and which have on file with the State Tax Commission a tax exemption letter issued by the United States Internal Revenue Service.

(b) The commission shall promulgate rules and regulations governing the taking of oysters by the nonprofit organization and shall issue such regulations to all organizations upon request and at the issuance of the special permit.

(5) The commission shall establish a reasonable period of time for depuration of oysters replanted from restricted waters. That period of time shall be consistent with the maintenance of the public health and may vary from time to time and from one reef to another in accordance with environmental conditions.

SOURCES: Laws, 1997, ch. 579, § 4; Laws, 1998, ch. 509, § 1; Laws, 2006, ch. 307, § 1; Laws, 2008, ch. 333, § 1, eff from and after passage (approved Mar. 25, 2008.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Federal Aspects — Section 501(c) of the United States Internal Revenue Code, referred to in (4), is codified at 26 U.S.C.S. § 501(c).

§ 49-15-37. Cultivation of oyster reefs; removal of oysters from restricted areas.

By order of the commission, the director, under the direction and control of the commission, shall employ boats, crews and laborers and shall cultivate the public reefs of the state, and shall dredge the oysters in the Mississippi Sound from places where they are too thick, and shall spread them on reefs where they are too thin, and shall carry shells from the factories and spread them in places where the oyster beds can be improved and enlarged. The department may purchase other materials as may be equally suitable for the propagation of oysters. The department in cultivating the reefs, transplanting and spreading oysters and shells and other suitable materials, may expend any funds available for that purpose. In taking seed oysters, care shall be used to not injure or destroy the merchantable oysters on the reefs from which they are taken. The seed oysters shall be tonged from the "conner" or seed reefs, unless it is practicable and safe to dredge those oysters. The commission may, by orders spread on its minutes, establish new bedding grounds at those places within the boundaries of the state as it may determine, on advice of the director, or on advice of technical governmental experts, or competent aquatic biologists. On existing public reefs in which oysters exist and in waters not of a safe sanitary quality as determined by the department, the commission shall prohibit any person, firm or corporation from taking oysters from those areas. The commission shall from time to time remove the oysters from the areas and relay or replant them in an approved area for a period of time under Section 49-15-36 before they may be harvested. The commission may transport the oysters to an onshore, molluscan depuration facility for the purpose of proving depuration technology and for other experimental purposes. In connection with the testing of onshore, molluscan depuration technology, the commission may sell or dispose of the relaid oysters in a manner consistent with all applicable state and federal laws and regulations. Any funds received from the sale of the oysters shall be used in a like manner as those funds received under Section 49-15-38.

If the commission finds that onshore, molluscan depuration technology proves to be successful, the commission may issue permits to private enterprise which may locate depuration facilities in Hancock, Harrison and Jackson Counties. The commission shall promulgate rules and regulations for the taking of oysters from reefs for transport to an onshore, molluscan depuration facility and for the operation of the facilities. Each depuration facility operated by private enterprise shall return oyster shells to the oyster reefs for replanting under the proper supervision of the department and under Section 49-15-38.

The commission may issue permits to persons to remove oysters by dredging or otherwise from water bottoms which are not of a safe sanitary quality for oysters for human consumption even though those areas may have been reserved for tonging only in Section 49-15-39. These areas shall be designated as seed grounds, and permits to persons shall be issued only for the purpose of transplanting oysters to privately leased Mississippi territorial waters. The commission may permit the transplanting of these seed oysters by a duly authorized public agency.

The commission may, upon certification of the department that the water bottom from which oysters are to be removed is not of a safe, sanitary quality for oyster production for human consumption and has been unsafe for a period of at least one (1) year immediately preceding certification, and upon complying with the following requirements, permit the dredging of oysters from restricted public areas and relaying the oysters to private leased grounds in the State of Mississippi:

(a) Permittee must hold valid lease of oyster bedding grounds in the State of Mississippi;

(b) Permittee must be bonded in compliance with the permit system established by the commission;

(c) Permittee must fulfill all permit requirements as established by the commission;

(d) Permittee shall not move oysters from one restricted area to another restricted area;

(e) Permittee shall move oysters only to an area leased by the commission after April 13, 1977; and

(f) Permittee shall not move oysters from the restricted area without the presence of an employee of the department at all times, from the dredging of the oysters from the restricted areas to their deposit on private leased grounds or to an onshore, molluscan depuration facility.

Harvesting of oysters shall be permitted only during daylight hours and with the most efficient gear possible consistent with conservation requirements of not damaging the reefs. This shall include permission to use two (2) dredges per boat on restricted areas and on private leased grounds.

Any person obtaining a permit to remove oysters from seed grounds shall post a penal bond of One Hundred Dollars ($100.00) per leased acre with the commission to be forfeited upon any violation of this section. The bond may be approved by the director of the department if the director finds the bond to be secured by sufficient property or sureties.

The commission shall regulate the amount and time of taking of oysters from seed areas and shall supervise the removal, planting and harvesting of oysters from the areas. The time set for the taking of oysters from restricted seed areas for relaying or replanting and the time set for the taking of oysters from private leased grounds shall be separated by not less than a period of time determined under Section 49-15-36 during which neither activity may be allowed.

The commission shall regulate the taking of oysters from restricted seed areas and the subsequent depuration of the oysters to protect public health, while at the same time fostering the utilization of the state's oyster resources. The regulations shall include the setting of the period of depuration for the oysters by the use of appropriate techniques and provide for an employee of the department to be present when the oysters are taken from restricted seed areas, and transported, held and deposited on private lease grounds. Any person, firm, corporation or private lease holder engaged in the depuration of oysters shall pay to the department an amount equal to the regular compensation of the employee of the department for the time the employee actually spends performing the duties, not to exceed Two Hundred Dollars ($200.00) per twenty-four-hour period.

Only persons who have been residents of Mississippi for at least five (5) years shall be eligible to obtain permits for removal of oysters from seed grounds.

The commission shall designate certain reefs in the state as public reefs and shall remove oysters from water bottoms which are not of a safe, sanitary quality for oyster production for human consumption and shall transport the oysters to the public reefs.

SOURCES: Codes, 1906, § 3505; Hemingway's 1917, § 6147; 1930, § 6874; 1942, § 6072; Laws, 1902, ch. 58; Laws, 1948, ch. 474, §§ 1, 2; Laws, 1958, ch. 195, § 37; Laws, 1974, ch. 572, § 8; Laws, 1977, ch. 463, § 3; Laws, 1980, ch. 429; Laws, 1987, ch. 521, § 2; Laws, 1988, ch. 395, § 3; Laws, 1997, ch. 399, § 3; Laws, 1997, ch. 579, § 22; Laws, 2004, ch. 325, § 1; Laws, 2005, ch. 381, § 1; Laws, 2006, ch. 307, § 2, eff from and after passage (approved Feb. 14, 2006.)

Joint Legislative Committee Note — Section 3 of ch. 399, Laws of 1997, amended this section, effective from and after passage (approved March 18, 1997). Section 22 of ch. 579, Laws of 1997, effective July 2, 1997, also amended this section. As set out above, this section reflects the language of Section 22 of ch. 579, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

ATTORNEY GENERAL OPINIONS

The Legislature clearly intended that the removal of seed oysters be governed by Section 49-15-37. Therefore, the Commission on Marine Resources does not have the authority to issue permits to private entities to take oysters from waters which are not of a safe sanitary quality for human consumption for relaying or depuration in waters beyond the territorial jurisdiction of the State of Mississippi. Woods, July 27, 1995, A.G. Op. #95-0480.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 40.

CJS. 36A C.J.S., Fish § 40.

§ 49-15-38. Culling requirements; collection and planting of shells; penalties and fees for failure to deliver shells.

(1)(a) Unless otherwise permitted by the commission, no oysters shall be taken from the reefs of this state unless culled upon the natural reefs, and all oysters less than three (3) inches from end to end, and all dead shells, shall be replaced, scattered and broadcast immediately on the natural reefs from which they are taken. It is unlawful for any captain or person in charge of any vessel, or any canner, packer, commission man, dealer or other person to purchase, sell or to have in that person's possession or under that person's control any oysters off the public reefs or private bedding grounds not culled according to this section, or any oysters under the legal size. A ten percent (10%) tolerance shall be allowed in relation to any culling.

(b) The commission may authorize the culling of oysters of a lesser measure. That authorization shall be in response to special circumstances or extreme natural conditions affecting the habitat, including, but not limited to, flooding. The department may establish checkpoints in any area within its jurisdiction to conduct inspections, collect fees and issue tags in the enforcement of this chapter and regulations adopted by the commission.

(2) The commission shall acquire and replant shells, seed oysters and other materials, when funding is available, for the purpose of growing oysters.

(3) Any person, firm or corporation failing or refusing to pay the shell retention fee required under Section 49-15-46 to the department when called for by the department, is guilty of a misdemeanor and, upon conviction, shall be fined not more than One Hundred Dollars ($100.00) for each barrel of shells for which they fail or refuse to tender the shell retention fee. In addition to the fine, the violator shall pay the reasonable value of the oyster shells and shall be ineligible to be licensed for any activity set forth in this chapter for a period of two (2) years from the date of conviction.

(4) The planting of oyster shells as provided under this chapter shall be under the direction and supervision of the executive director of the department. The governing authorities of each county and municipality bordering upon the Mississippi Sound may assist the commission in the planting and replanting of oyster shells.

SOURCES: Laws, 1997, ch. 579, § 5; Laws 1998, ch. 480, § 1; Laws, 1999, ch. 519, § 3; Laws, 2008, ch. 333, § 2, eff from and after passage (approved Mar. 25, 2008.)

§ 49-15-39. Dredging limits; reefs reserved for tonging; penalties.

(1) It is unlawful for any person to catch or take oysters by means of dredging in any of the waters designated as tonging reefs by the commission.

(2) The commission shall designate certain areas as tonging reefs. The commission shall mark the boundaries of the areas designated by appropriate poles, stakes or buoys of material that will not injure watercraft. The commission may authorize the taking of oysters on reefs designated as tonging reefs by dredge, drag or scoop if the commission finds that the dredging, dragging or scooping is necessary to manage the resource properly. Any dredging, dragging or scooping authorized under this section shall be for a specific time period as provided by the commission.

(3) Unless otherwise authorized under this section, any boat or vessel which catches or takes oysters by means of dredges, drags or scoops, other than hand tongs, from any of the areas described in this section, or with a dredge or dredges in the water, shall have all oysters on board the boat or vessel declared to be contraband. The oysters shall be taken and confiscated by the department or any marine law enforcement officer without court procedure. The captain and crew of the boat or vessel, promptly upon being ordered so to do, shall transport the oysters to a point on the public reefs of the state where the boat or vessel is found and there scatter the oysters according to the instructions of the enforcement officers.

(4) A violation of this section is punishable by a fine of Five Hundred Dollars ($500.00). For a second offense when the offense is committed within a period of three (3) years from the first offense, the violation is punishable by a fine of One Thousand Dollars ($1,000.00). For a third or subsequent offense

when the offense is committed within a period of three (3) years from the first offense, the violation is punishable by a fine of Two Thousand Dollars ($2,000.00).

(5) In addition, upon conviction of a third or subsequent offense within three (3) years of the first offense, it shall be the duty of the court to revoke the license of the convicted party and of the vessel used in the offense, and no license shall be issued to that person or for the vessel to engage in the catching or taking of any seafood from the waters of this state for a period of one (1) year following the conviction.

(6) The fine imposed under this section shall not be suspended or reduced.

SOURCES: Codes, Hemingway's 1917, § 6162; 1930, § 6880; 1942, § 6075-12; Laws, 1913, ch. 4; Laws, 1926, ch. 295; Laws, 1944, ch. 287, § 3; Laws, 1950, ch. 553; Laws, 1958, ch. 195, § 52; Laws, 1977, ch. 463, § 4; Laws, 1997, ch. 399, § 2; Laws, 2000, ch. 524, § 1; Laws, 2005, ch. 383, § 1, eff from and after July 1, 2005.

Cross References — Inclusion of areas described in this section within definition of "tonging reef," see § 49-15-3.

Issuance of permits for removal of oysters from unsafe water bottoms even though those areas may have been reserved for tonging only under this section, see § 49-15-37.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 31, 40.

CJS. 36A C.J.S., Fish §§ 24-26, 40.

§ 49-15-40. Projects to create or establish new oyster beds; molluscan depuration facilities; lease of water bottoms to political subdivisions.

(1) The commission may support projects in the nature of digging or constructing canals or ditches to bring additional water to existing oyster reefs or beds in need of that water, or for the purpose of creating or establishing new oyster reefs or beds. All reefs created or established under this section shall be public reefs. The commission may expend any monies as it deems necessary and expedient to participate in the digging of those canals. The commission may also enter into interstate or intrastate efforts to support these projects and may seek and utilize aid from all federal, state and local sources in this endeavor. To aid in the construction of any canals or ditches, the commission may exercise the right of eminent domain in the manner provided by law.

(2) The commission may construct, operate and maintain an onshore, molluscan depuration facility using any federal or special funds, other than general funds, for the purpose of testing and proving depuration technology of oysters and other molluscan shellfish. In connection with the construction, operation and maintenance of the facility, the commission may contract with any persons it deems necessary for the operation, testing, maintenance and evaluation of the facility, subject to the approval of the State Personnel Board. The commission may locate the facility on any available public properties,

subject to the approval of the governing body of that jurisdiction and all other applicable state laws. Once depuration technology has been tested and proven for oysters, the commission may conduct any other tests and experiments with oysters or other shellfish as may be necessary to enhance production or quality of shellfish.

(3) The commission may lease to political subdivisions of the State of Mississippi up to one thousand (1,000) acres of water bottoms for development of oyster reefs and those political subdivisions may permit residents of the State of Mississippi to harvest oysters from the reefs. The political subdivision may charge and receive a fee for each sack of oysters harvested. The commission shall consider and approve the application of a political subdivision after determining that (a) no conflicts exist with sites requested in applications filed before the application of the political subdivision; (b) a fair and reasonable rental payment has been set; and (c) the lease will insure the maximum culture and propagation of oysters.

SOURCES: Laws, 1997, ch. 579, § 6, eff from and after July 2, 1997.

§ 49-15-41. Oysters not to be caught at night.

It shall be unlawful for any person to fish, catch or take oysters from any of the oyster reefs in the State of Mississippi by the use of any tongs, dredge, rake or other mechanical device, during the hours between sunset and sunrise of each day.

Violation of this section shall be punishable by a fine nor to exceed Ten Thousand Dollars ($10,000.00) and/or up to one (1) year in the county jail.

SOURCES: Codes, 1930, § 6879; 1942, § 6077; Laws, 1958, ch. 195, § 56; Laws, 1977, ch. 463, § 5, eff from and after passage (approved April 13, 1977).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 40.

CJS. 36A C.J.S., Fish § 40.

§ 49-15-42. Tagging, unloading and transporting of oysters.

(1) All oysters caught in Mississippi territorial waters shall be tagged and unloaded in Mississippi. Before tagging and unloading, the oysters must be sacked or packaged in containers or by other methods approved by the department. However, a person is exempt from the unloading requirement if he is transporting the oysters to a state that has a reciprocity agreement with Mississippi exempting Mississippi residents from the unloading requirements of that state.

(2) The driver of any vehicle used in the transporting of oysters in the shell from outside the territorial limits of the State of Mississippi, whether the vehicle is a boat or motor vehicle, shall possess an invoice, statement or other bill of lading which bears the name of the person, firm or corporation from whom the oysters were purchased, the name of the purchaser and the number of barrels or bushels of oysters which the vehicle or vessel contains.

SOURCES: Laws, 1977, ch. 463, § 6; Laws, 1982, ch. 446, § 4; Laws, 1994, ch. 505, § 1, eff from and after passage (approved March 23, 1994).

§ 49-15-43. Packaging of oysters; containers.

Oysters for sale either wholesale or retail may be packaged in glass jars covered with a screw-type top or lid of the type customarily and heretofore used in the seafood industry in the State of Mississippi, but this section shall automatically be repealed if and when such type packaging becomes prohibited by any agency of the United States Government for shipment in interstate commerce.

SOURCES: Codes, 1942, § 6085-11; Laws, 1964, ch. 246, § 1, eff from and after passage (approved June 3, 1964).

§ 49-15-44. Sale or possession of illegal oysters prohibited; penalties.

The commission shall prohibit the sale or possession of illegal oysters. It is unlawful for any person, firm or corporation to possess or to engage in the sale of oysters not certified in this state, or to shuck or repack for sale any illegal oysters, unless that person, firm or corporation possesses a bill of sale, valid permit or affidavit of another state, properly dated, evidencing the legality of the sale or possession of the oysters in that state. Any person in possession of illegal oysters shall be subject to civil or criminal prosecution and shall be fined not less than One Hundred Dollars ($100.00) or punished as provided in Section 49-15-63.

SOURCES: Laws, 1997, ch. 579, § 7, eff from and after July 2, 1997.

§ 49-15-45. Certain municipalities may enforce oyster laws.

(1) Any municipality bounded by the Gulf of Mexico or Mississippi Sound, which has wholly or partly within its corporate limits, or in the waters adjacent thereto, a public oyster reef reserved for catching oysters exclusively by use of hand tongs, is hereby authorized to aid and cooperate with the commission in enforcing all laws regulating the catching, taking and transporting of oysters, including all of the provisions of this chapter, and all regulations and ordinances of such commission relating to such oyster reefs.

(2) Such municipality may, in its discretion, extend its corporate limits by continuing its boundaries at right angles to the shore line, into the waters of the Mississippi Sound or Gulf of Mexico or waters tributary thereto to any line

within the boundaries of the State of Mississippi, and may, by ordinance spread upon its minutes, provide that all violations of such laws and ordinances regulating the catching, taking and transporting of oysters shall be violations of the municipal ordinances and punishable as such.

(3) In carrying out the provisions of this section such municipality may purchase, equip and maintain a suitable patrol boat and employ and pay the salaries of a crew to operate same and officers to enforce such laws and ordinances.

(4) Neither prosecutions nor convictions by such municipality shall bar further prosecution and conviction by the commission or its officers for the same offense.

(5) All fines collected by such municipality in enforcing the provisions of this chapter shall be paid into the general fund of the municipality and all costs and expenses incurred in connection with this chapter shall be paid out of the general fund of the municipality.

(6) Officers employed or deputized by the municipality to carry out the provisions of this section shall have the right to make arrests without warrant for any violations of the laws, ordinances or regulations referred to in subsection (1) hereof, committed in the presence or in the view of such arresting officer.

(7) Nothing herein contained shall be construed to authorize any municipality to adopt any ordinances regulating catching, taking or transporting oysters. The authority vested in such municipality under this section being limited to enforcement of statutes passed by the Legislature and ordinances and regulations adopted by the commission.

SOURCES: Codes, 1942, § 6085-01; Laws, 1944, ch. 286, §§ 1-7; Laws, 1958, ch. 195, § 64; Laws, 2000, ch. 516, § 87, eff from and after passage (approved Apr. 30, 2000.)

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 30.

CJS. 36A C.J.S., Fish §§ 24-26, 40.

§ 49-15-46. Licensing and fees for vessels engaged in catching, taking, carrying or transporting oysters; license requirement for captain of commercial oyster vessel; designation of alternate captain for each license; transfer of vessel license; tagging of oysters harvested; recreational oyster permits; shell retention fees; authority to keep certain number of blue crabs for personal consumption.

(1) Each vessel used to catch, take, carry or transport oysters from the reefs of the State of Mississippi, or engaged in transporting any oysters in any of the waters within the territorial jurisdiction of the State of Mississippi, for

commercial use, shall annually, before beginning operations, be licensed by the commission and pay the following license fee:

(a) Fifty Dollars ($50.00) on each in-state vessel or boat utilized for tonging oysters or gathering oysters by hand;

(b) One Hundred Dollars ($100.00) on each in-state vessel or boat utilized for dredging oysters;

(c) One Hundred Dollars ($100.00) on each out-of-state vessel or boat utilized for tonging oysters or gathering oysters by hand; or

(d) Two Hundred Dollars ($200.00) on each out-of-state vessel or boat utilized for dredging oysters.

(2) Each captain of each commercial vessel, used for either tonging or dredging, shall purchase a license entitled "captain license — oyster" for a fee not to exceed Ten Dollars ($10.00) and may designate one (1) alternate captain for each license.

(3) The commission may authorize the transfer of a vessel license to a different vessel provided that the owner of both vessels is the same titled owner.

(4) All oysters harvested in the State of Mississippi shall be tagged. Tags shall be issued by the department and shall bear the catcher's name, the date and origin of the catch, the shell stock dealer's name and permit number. The department shall number all tags issued and shall maintain a record of those tags. The commission, in its discretion, may adopt any regulations regarding the tagging of oysters and other shellfish.

(5) Each person catching or taking oysters from the waters of the State of Mississippi for personal use shall obtain a permit from the commission and pay an annual recreational oyster permit fee of Ten Dollars ($10.00). Oysters caught under a recreational permit shall not be offered for sale. The limits on the allowable catch of oysters for recreational purposes shall be three (3) sacks per week. The department shall issue tags of a distinguishing color to designate recreationally harvested oysters, which shall be tagged on the same day of harvest in the manner prescribed in subsection (4) of this section for commercially harvested oysters or by regulation of the commission.

(6) The commission shall assess and collect a shell retention fee for the shells taken from waters within the territorial jurisdiction of the State of Mississippi as follows:

(a) Commercial and recreational harvesters — Fifteen Cents (15¢) per sack paid to the department on the day of harvest;

(b) Initial oyster processor, dealer or factory first purchasing the oysters — Fifteen Cents (15¢) per sack paid to the department no later than the tenth day of the month following the purchase, on forms submitted by the department;

(c) Commercial harvesters transporting their catch out of the state — Fifty Cents (50¢) per sack paid to the department on the day of harvest, in addition to the fees paid in subsection (6)(a); and

(d) Commercial harvesters not selling their oysters to a Mississippi dealer — Fifteen Cents (15¢) per sack paid to the department on the day of harvest, in addition to fees paid in subsection (6)(a).

Funds received from the shell retention fee shall be paid into a special fund in the State Treasury to be appropriated by the Legislature for use by the commission to further oyster production in this state, which includes plantings of oysters and/or cultch materials.

(7) During open seasons, oysters may be taken only by hands, tongs and dredges.

(8) Vessels licensed under Section 49-15-46 may keep in whole, for personal consumption up to thirty-six (36) blue crabs (portunidae family), per day. This exemption for personal consumption does not apply to fish or crabs that are otherwise illegal to possess or catch.

SOURCES: Laws, 1997, ch. 579, § 8; Laws, 1999, ch. 519, § 4; Laws, 2000, ch. 524, § 3; Laws, 2002, ch. 430, § 1; Laws, 2004, ch. 333, § 1; Laws, 2006, ch. 306, § 1; Laws, 2009, ch. 362, § 1; Laws, 2010, ch. 343, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in statutory references in this section. The paragraph designated "(7)" by Section 1 of Chapter 343, Laws of 2010, was changed to (6)(d), and the subsections designated (8) and (9) by the act were redesignated (7) and (8). The Joint Committee ratified these corrections at its July 22, 2010, meeting.

Amendment Notes — The 2010 amendment added (3); redesignated former (3) through (5) as present (4) through (6); redesignated former (6)(d) as (7); redesignated former (6) and (7) as (8) and (9); and made related internal reference updates.

§ 49-15-47. Prohibition against discharging human waste in Mississippi's marine waters from vessels harvesting or transporting oysters; approved marine sanitation devices required; penalties.

(1) It is unlawful for any person, firm or corporation to discharge solid or human waste from any vessel while the vessel is used to harvest or transport oysters in the marine waters of the state.

(2) Each vessel used to harvest or transport oysters is required to have an approved functional marine sanitation device (MSD), portable toilet or other sewage disposal receptacle designed to contain human sewage. The approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle shall:

(a) Be used only for the purpose intended.

(b) Be secured while on board and located to prevent contamination of shell stock by spillage or leakage.

(c) Be emptied only into an approved sewage disposal system.

(d) Be cleaned before being returned to the vessel.

(e) Not be cleaned with equipment used for washing or processing food.

(3) The use of other receptacles for sewage disposal may be approved by the department if the receptacles are:

(a) Constructed of impervious, cleanable materials and have tight-fitting lids; and

(b) Meet the requirements listed in subsection (2).

(4) The commission shall promulgate administrative penalties for violations of this section, which may include, but not be limited to, revocation of the license of the oyster vessel for up to one (1) year for the first offense, revocation up to two (2) years for the second offense, and permanent revocation for the third offense.

(5) Upon issuance of a citation for a violation of this section, the vessel shall be removed from the oyster reef and any oysters on board the vessel shall be confiscated and disposed of by the department. The vessel shall not be permitted to harvest from any public or private reefs until the vessel is properly equipped as determined by an inspection by the department.

SOURCES: Laws, 2010, ch. 378, § 1, eff from and after July 1, 2010.

Editor's Note — A former § 49-15-47 [Codes, 1942, § 6048-02; Laws, 1962, ch. 193, § 2; Repealed by Laws, 1974, ch. 572, § 10, effective from and after passage (approved April 23, 1974)] pertained to contracts for removal of shells.

§§ 49-15-49 through 49-15-59. Repealed.

Repealed by Laws of 1974, ch. 572, § 10, eff from and after passage (approved April 23, 1974).

§ 49-15-49. [Codes, 1942, § 6048-03; Laws, 1962, ch. 193, § 3]
§ 49-15-51. [Codes, 1942, § 6048-04; Laws, 1962, ch. 193, § 4]
§ 49-15-53. [Codes, 1942, § 6048-05; Laws, 1962, ch. 193, § 5]
§ 49-15-55. [Codes, 1942, § 6048-06; Laws, 1962, ch. 193, § 6]
§ 49-15-57. [Codes, 1942, § 6048-07; Laws, 1962, ch. 193, § 7]
§ 49-15-59. [Codes, 1942, § 6048-08; Laws, 1962, ch. 193, § 8]

Editor's Note — Former §§ 49-15-49 through 49-15-59 pertained to contracts for removal of shells.

§ 49-15-61. Marine museum.

The governing body of any municipality or county on the Mississippi Sound having located therein a United States Department of Interior and wild life service facility are hereby authorized either severally or jointly to contribute to the cost of the construction and erection of a marine museum for the purpose of displaying aquatic products available in the Mississippi Sound and in the Gulf of Mexico. However, the United States Department of Interior shall contribute at least fifty percent (50%) of the cost of the construction and erection of such marine museum.

SOURCES: Codes, 1942, § 6047-19; Laws, 1960, ch. 173, § 19, eff from and after passage (approved March 23, 1960).

§ 49-15-63. Penalties.

(1)(a) Any person, firm or corporation violating any of the provisions of this chapter or any ordinance duly adopted by the commission, unless otherwise specifically provided for herein, shall, on conviction, be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), for the first offense, unless the first offense is committed during a closed season, in which case the fine shall be not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00); and not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00), for the second offense when such offense is committed within a period of three (3) years from the first offense; and not less than Two Thousand Dollars ($2,000.00) nor more than Four Thousand Dollars ($4,000.00), or imprisonment in the county jail for a period not exceeding thirty (30) days for any third or subsequent offense when such offense is committed within a period of three (3) years from the first offense.

(b) In addition, upon conviction of such third or subsequent offense, it shall be the duty of the court to revoke the license of the convicted party and of the boat or vessel used in such offense, and no further license shall be issued to such person and for said boat to engage in catching or taking of any seafoods from the waters of the State of Mississippi for a period of one (1) year following such conviction. Forfeiture of any equipment or nets used in a second or subsequent offense may be instituted pursuant to Sections 49-15-201 through 49-15-207. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated. Equipment as used in this section shall not mean boats or vessels.

(c) Any person convicted and sentenced under this section for a second or subsequent offense shall not be considered for reduction of sentence.

(d) Except as provided under subsection (5) of Section 49-15-45, any fines collected under this section shall be paid into the Seafood Fund.

(e) In addition to any other penalties, the commission may suspend the license of any person convicted of a violation of this chapter and may suspend the license of any vessel used in the violation for a period not to exceed five (5) days for the first offense. For a second offense, the commission may suspend the license of such person and vessel for a period not to exceed thirty (30) days.

(f) Upon conviction of five (5) seafood violations within a five-year period, the commission may revoke the license of the convicted party and the boat or vessel used in the offenses, and may prohibit indefinitely the issuance of a license to the person and boat or vessel to engage in catching or taking of any seafood from the waters of the State of Mississippi. The commission shall exercise this authority in accordance with the administrative procedures in Section 49-15-401 et seq.

(2) For any violation of this chapter, the individual registered as the captain shall be subject to the penalties provided in this chapter, if that

individual is aboard the vessel. If that individual is not aboard the vessel, the individual designated as the alternate captain under Section 49-15-46 or substitute captain under Section 49-15-64.5 shall be subject to the penalties provided in this chapter. If no individual is designated under Section 49-15-46 or Section 49-15-64.5, the person, firm or corporation owning the vessel shall be subject to the penalties provided for boat captains.

(3) All citations issued to boat operators for not possessing the boat's registration card shall be dismissed, along with all related court costs, upon the presentment of the boat's proper registration card to the court or magistrate holding the trial or hearing.

SOURCES: Codes, 1942, § 6047-13; Laws, 1960, ch. 173, § 13; Laws, 1980, ch. 365; Laws, 1988, ch. 388, § 1; Laws, 1993, ch. 532, § 2; Laws, 1993, ch. 521, § 2; Laws, 1994, ch. 578, § 22; Laws, 1997, ch. 601, § 1; Laws, 1999, ch. 519, § 7; Laws, 2003, ch. 380, § 1; Laws, 2004, ch. 333, § 2; Laws, 2006, ch. 306, § 2; Laws, 2010, ch. 410, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (1)(f).

Cross References — Seafood Fund, see § 49-15-17.

Application of this section to violations resulting from the use of aircraft to assist in the taking of redfish, see § 49-15-73.

Application of penalty in this section to selling game fish, see § 49-15-76.

Application of this section to a person convicted of possessing or catching egg-bearing female crabs at certain times, or catching, destroying, confining, or holding certain crabs, see § 49-15-93.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources does not have the authority to establish criminal penalties under the Seafood Chapter of the Mississippi Code for violations of its ordinances. Gusa, November 20, 1998, A.G. Op. #98-0692.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 54.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 36A C.J.S., Fish §§ 42 et seq.

§ 49-15-64. Shrimping during closed season prohibited; penalties; promulgation of rules and regulations.

Any operator, firm or corporation engaged in commercial shrimping during the closed season shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).

Upon an arrest for a violation of this section, catch and nets may be confiscated. Any catch may be sold by the law enforcement agency making the arrest at the average wholesale price being paid for shrimp. The monies derived from the sale shall be held in escrow pending disposition of the charge. If a conviction is obtained, the monies held in escrow shall be forfeited. The monies so forfeited shall be paid to the department, to be paid into the seafood fund. If the operator, firm or corporation is acquitted of the charge or if the charge is dismissed, then the monies obtained from the sale shall be paid to the proper operator, firm or corporation. Forfeiture of confiscated nets and paraphernalia shall be instituted under Sections 49-7-251 through 49-7-257. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated.

The commission may issue special permits for the purpose of catching shrimp prior to the official opening of shrimp season, to those nonprofit organizations that are tax exempt under Section 501(c) of the United States Internal Revenue Code and which have on file with the State Tax Commission a tax exemption letter issued by the United States Internal Revenue Service. However, until January 1, 1992, the requirement that a nonprofit organization have on file with the State Tax Commission a tax exemption letter issued by the United States Internal Revenue Service shall be considered as having been met if the organization has actually made application for such exemption and has on file with the State Tax Commission a copy of its application.

The commission shall promulgate rules and regulations governing the taking of shrimp by the nonprofit organization and shall issue such regulations to all organizations upon request and at the issuance of the special permit.

SOURCES: Laws, 1988, ch. 388, § 2; Laws, 1991, ch. 514, § 1; Laws, 1993, ch. 532, § 3; Laws, 1994, ch. 578, § 19; Laws, 1997, ch. 601, § 2; Laws, 2000, ch. 522, § 1, eff from and after July 1, 2000.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

Federal Aspects — Organizations exempt from federal tax on corporations under Section 501(c) of the Internal Revenue Code, see 26 USCS § 501(c).

§ 49-15-64.1. Shrimp season: waters closed to shrimping.

(1) The shrimp season shall open on the first Wednesday of June. The shrimp season shall be closed from January 1 until it is opened the first Wednesday of June, except south of the Intercoastal Waterway. The shrimp season shall be closed south of the Intercoastal Waterway from May 1 until it

is opened the first Wednesday of June, except as may be provided in subsection (2) of this section. For the purposes of this section only, that portion of the Intercoastal Waterway that extends from a point south of Long Beach to a point south of Point Clear is described as follows:

Begin at green buoy or beacon number 1 which is located approximately three (3) miles north of West Point on Cat Island, thence extending southwesterly to buoy or beacon number 4P, thence southwesterly to Pass Marianne Light, thence southwesterly to buoy or beacon number 15P at the northernmost point of Merrill Coquille, thence southwesterly to buoy or beacon number 17P, thence southwesterly to buoy or beacon number 22, thence westerly to Lighthouse Point and continuing westward following the meandering of the shoreline to the boundary line of the state.

(2) The commission, by majority vote, may open the season at an earlier or later date in designated areas only after sampling areas within its jurisdiction where shrimp may be caught for the purpose of determining the count of shrimp per pound. The commission may also, by majority vote, close certain designated areas where the shrimp count is found, by sampling, to be in excess of sixty-eight (68) per pound. If a natural or man-made disaster has the potential of adversely affecting the shrimp fishery, the commission, by majority vote, may open legal shrimping areas.

(3) The following waters are protective and staging areas for young shrimp, and are permanently closed to commercial and recreational shrimping activities:

All waters north of a line beginning at a point one-half mile due South of the shoreline at the Mississippi-Alabama state boundary; thence running westerly following the meanderings of the shoreline one-half mile therefrom to Light "5" in the Bayou Casotte Channel; thence running northerly to Light "7" in the Bayou Casotte Channel; thence running westerly following the meanderings of the shoreline one-half mile therefrom to the intersection with the Pascagoula Channel; thence running northwesterly to Beacon "50" in the Pascagoula Channel; thence running southwesterly to Beacon "49" in the Pascagoula Channel; thence running in the most direct line to the northeast point of Singing River Island; thence running westerly along the north shoreline to the northwest point of Singing River Island; thence running northwesterly to a point one-half mile due south of the mouth of Graveline Bayou; thence running westerly following the meanderings of the shoreline one-half mile therefrom to Beacon "18" in the Biloxi Bay Channel; thence running northwesterly to Beacon "22" in the Biloxi Bay Channel; thence running northwesterly to Beacon "26" in the Biloxi Bay Channel; thence running westerly to Beacon "34", exclusive of the Biloxi Channel itself; thence running westerly to Beacon "30" in the Biloxi Channel, exclusive of the Biloxi Channel itself; and thence running due South to a point on the north shore of Deer Island; thence running westerly following the north shore of Deer Island to the westernmost tip; thence running westerly in the most direct line to Biloxi Beacon "8"; thence running westerly following the meanderings of the shoreline at a distance of one-half mile therefrom to a point on the centerline of the CSX Railroad Bridge over St. Louis Bay; thence running westerly along the centerline of said bridge to a point one-half mile south of the western abutment; thence running southwesterly following the meanderings of the shoreline, at a distance of one-half mile therefrom, to a point one-half mile due East of the mouth of Bayou Caddy; thence running due West to the mouth of Bayou Caddy; thence running southwesterly following the meanderings of the shoreline to the southernmost point of the Mississippi shoreline on the east bank of the mouth of the Pearl River thence following the meanderings of the east bank of the Pearl River to a point where the east bank of the Pearl River intersects the centerline of the Highway 90 bridge; thence westerly along the centerline of the Highway 90 bridge to a point that intersects the Mississippi-Louisiana state boundary.

(4) The redesignation of beacon numbers by the United States Coast Guard shall not alter the description of the boundary described in this section.

SOURCES: Laws, 1997, ch. 579, § 9; Laws, 2003, ch. 379, § 1; Laws, 2012, ch. 327, § 1, eff from and after passage (approved Apr. 13, 2012.)

Amendment Notes — The 2012 amendment added subsection designations; added "except as may be provided in subsection (2) of this section" to the end of the third sentence of (1); and added the last sentence of (2).

§ 49-15-64.2. Shrimping permitted with cast net.

Any person shall be allowed to take shrimp in the bays located within and surrounding the cities of Bay St. Louis, Biloxi, Gautier, Ocean Springs and Pascagoula with a cast net, but shall not take more than fifty (50) pounds of shrimp per person per day for personal consumption. The cast net shall not exceed twelve (12) feet in length.

SOURCES: Laws, 1997, ch. 579, § 10; Laws, 2011, ch. 450, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the first sentence.

§ 49-15-64.3. Shrimping during closed season prohibited; penalties; promulgation of rules and regulations.

(1) It is unlawful for any person, firm or corporation to take, catch or have in their possession within territorial waters of the State of Mississippi shrimp of a size weighing in the raw state less than one (1) pound to each sixty-eight (68) shrimp, except as provided under Section 49-15-64.1, except when a valid permit or affidavit of another state identifies the catch as having been taken in non-Mississippi waters, or except in case of live bait shrimp.

(2) It is unlawful to take, catch or have in possession live bait shrimp of a size weighing in the raw state less than one (1) pound to each one hundred (100) shrimp. This provision may be changed by a two-thirds (⅔) vote of the commission. The commission may adopt rules, regulations, guidelines and other operation criteria in conjunction with licensing live bait dealers and live

bait catcher boats as it deems appropriate to ensure that only bona fide operations will be licensed.

(3) If a live bait dealer or live bait catcher boat is convicted of a violation of this chapter or a duly adopted ordinance of the commission, the commission may, in addition to punishment duly adjudicated, revoke the license of the vessel or dealer to whom it is issued for a period not exceeding two (2) weeks following conviction of the first offense, not exceeding six (6) months following conviction of the second offense, and up to one (1) year following conviction of the third and subsequent offenses, if the subsequent offenses are committed within three (3) years of the first offense. Upon the revocation of the license, the commission may require the posting of a cash performance bond not to exceed One Thousand Dollars ($1,000.00) before the reissuance of that revoked license. The commission may require the forfeiture of that bond upon the subsequent conviction of any violation of this chapter or a duly adopted ordinance of the commission. If a person who posts bond under this section desires to no longer engage in the live bait business, that person shall certify that fact to the commission who shall return the bond. If that person desires to again engage in the live bait business, a cash performance bond may be required before the issuance of a license.

SOURCES: Laws, 1997, ch. 579, § 11; Laws, 2002, ch. 569, § 1; Laws, 2012, ch. 327, § 2, eff from and after passage (approved Apr. 13, 2012.)

Amendment Notes — The 2012 amendment inserted "except as provided under Section 49-15-64.1" in (1); and deleted "The commission shall consult with existing live bait dealers and live bait catcher boat operators before adoption of any regulations and before any future changes. The commission shall hold a public hearing in the county affected by the regulation, but if more than one (1) county is affected, then the commission shall hold a public hearing in Harrison County. The commission shall notify each live bait licensee of the public hearing at least ten (10) days prior to the hearing, by first class mail at the last known address of the licensee" from the end of (2).

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources does not have the authority to levy administrative fines and to suspend or revoke fishing licenses for violations of the Commission's Ordinances or of the Seafood Chapter. Gusa, November 20, 1998, A.G. Op. #98-0692.

§ 49-15-64.4. Live bait catcher boat and live bait dealer privilege taxes.

(1) Each live bait catcher boat engaged in taking live bait shrimp shall pay an annual privilege tax of One Hundred Dollars ($100.00) for each boat engaged in those operations. The operations shall not exceed two (2) boats per license.

(2) Each "live bait dealer" engaging in selling or otherwise dispensing live bait to sport fishermen shall pay an annual privilege tax of Fifty Dollars ($50.00) and must make written application to the commission providing the

name of the applicant's "live bait catcher boat," the name of the captain of that "live bait catcher boat," the dealer's Mississippi state sales tax number and a sworn statement that dead shrimp will not be sold in containers having a volume in excess of sixteen (16) ounces. Licensed live bait catcher boats and licensed live bait dealers shall not operate as commercial shrimpers or commercial shrimp dealers or otherwise engage in commercial shrimping operations. Live bait dealers shall only sell or otherwise dispose of bait shrimp when alive or dead with heads attached solely as bait to recreational fishermen or other licensed live bait dealers as regulated by the commission. Only licensed commercial shrimpers may transport shrimp across the state line for the purpose of selling or delivering live bait to another state. Any person, firm or corporation found guilty of purchasing shrimp from a live bait camp or live bait catcher boat, other than for the purpose described in this section, shall be fined Five Thousand Dollars ($5,000.00) for the first offense and shall be fined Ten Thousand Dollars ($10,000.00) and forfeit all seafood licenses for a second or subsequent offense. In addition, each application for a "live bait dealer" license shall contain a statement of the operating hours, at least eight (8) per twenty-four-hour period, and the location of the camp which must be accessible to the general public by public road or waters located within the three (3) coastal counties. Applications for a live bait camp may be submitted anytime. Live bait camps may be inspected within thirty (30) days after receipt of the completed application. Any "live bait dealer" desiring to engage in the catching of live shrimp in one (1) location and then transporting them to the dealer's licensed live bait camp by truck shall first make written application to the commission providing the make and model of the truck, a Mississippi license tag number and shall be responsible for its adherence to all regulations duly adopted by the commission for the transportation of live bait shrimp. Upon receipt of the application, the commission shall verify that the applicant is in compliance with all applicable laws and regulations and after that verification the commission shall issue a permit authorizing the transportation of live shrimp.

SOURCES: Laws, 1997, ch. 579, § 12; Laws, 2007, ch. 320, § 1; Laws, 2011, ch. 412, § 1, eff from and after passage (approved Mar. 16, 2011.)

Amendment Notes — The 2011 amendment in (2), rewrote the seventh sentence and added the eighth sentence.

§ 49-15-64.5. Boats used for catching or transporting saltwater shrimp; licensing and fees.

(1)(a) Each freight boat, ice boat and catching boat used in catching or transporting saltwater shrimp taken from the waters of the State of Mississippi for sale in their fresh state, or for canning, packing, freezing or drying, shall first obtain from the commission an annual privilege license and pay a license fee at the following rates:

(i) Fifty Dollars ($50.00) for resident boats or vessels under thirty (30) feet in length in overall measurements and One Hundred Dollars ($100.00) for nonresident boats or vessels under thirty (30) feet in length in overall measurements;

(ii) Seventy-five Dollars ($75.00) for resident boats or vessels between thirty (30) and forty-five (45) feet in length in overall measurements and One Hundred Dollars ($100.00) for nonresident boats or vessels between thirty (30) and forty-five (45) feet in length in overall measurements;

(iii) One Hundred Dollars ($100.00) for resident boats or vessels greater than forty-five (45) feet in length in overall measurements and Two Hundred Dollars ($200.00) for nonresident boats or vessels greater than forty-five (45) feet in length in overall measurements.

(b) Beginning September 15, 1994, no nonresident shall be issued a commercial fishing license under this chapter for the taking of saltwater shrimp using any type of net if that nonresident's state of domicile prohibits the issuing of commercial fishing licenses to residents of this state to engage in like activity.

(2) Each recreational vessel engaging in shrimping with a net having a corkline length of sixteen (16) feet or less shall pay an annual resident license fee of Fifteen Dollars ($15.00) or an annual nonresident license fee of Thirty Dollars ($30.00).

(3) Every freight boat, ice boat and catching boat used in catching or transporting saltwater shrimp taken from the waters of the State of Mississippi for sale in their fresh state, or for canning, packing, freezing, drying or as bait shall register the name of the captain of the vessel at the time that the vessel obtains the annual privilege license provided for in this section. The individual registered as the captain of the vessel may be substituted after notification to and the approval of the deputy director or the deputy director's designated representative. The captain shall purchase a license entitled "captain license." This license shall be purchased at the same time the vessel license is purchased. The fee for a captain license shall be a minimum of Ten Dollars ($10.00).

(4) During open seasons and in open areas, saltwater shrimp may be taken only with shrimp trawls, trawls, butterfly nets, skimmer nets, push trawls, beach seines and cast nets.

SOURCES: Laws, 1997, ch. 579, § 13; Laws, 1999, ch. 519, § 5; Laws, 2000, ch. 378, § 1, eff from and after passage (approved Apr. 17, 2000.)

§ 49-15-65. Jurisdiction of courts; appeals.

The justice courts of the respective counties or county courts shall have original jurisdiction of any prosecution or suit brought under authority of this chapter, or of any violation of any ordinance duly enacted by the commission. However, from each decision or judgment, whether from a fine or imprisonment, there shall be allowed an appeal, and such appeals and trials shall be had as now provided by law.

SOURCES: Codes, 1942, § 6047-12; Laws, 1960, ch. 173, § 12; Laws, 1962, ch. 193, § 11; Laws, 1981, ch. 471, § 51; Laws, 1982, ch. 423, § 28, made eff from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3); Laws, 1991, ch. 522, § 5, eff from and after July 1, 1991.

Cross References — General jurisdiction of justice court judges, see §§ 9-11-9, 99-33-1 et seq.

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources does not have the authority to adopt rules of evidence for use in trials involving violations of the Seafood Chapter. Gusa, November 20, 1998, A.G. Op. #98-0692.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 47 et seq.

§ 49-15-67. Appellate procedure.

(1)(a) Any party may file an appeal from the decision of the commission with the Chancery Court of Harrison County, Second Judicial District. The appeal shall be filed within thirty (30) days of the decision of the commission. An appeal to the chancery court shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may petition the chancery court for an appeal with supersedeas and the court shall grant a hearing on the petition, and upon good cause shown may grant the appeal with supersedeas. If granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the court.

(b) If the court finds that the order appealed from is supported by substantial evidence, is not arbitrary and capricious and does not violate constitutional rights, the court shall affirm the order of the commission.

(2) Upon the filing of an appeal, the clerk of the chancery court shall serve notice upon the commission. The commission shall within sixty (60) days from the service of the notice, or within such additional time as the court may for cause allow, certify to the court the record in the case. The record shall include transcript of all testimony, objections, exhibits or copies thereof, pleadings, proceedings, orders, findings and opinions entered in the case. However, the parties and commission may stipulate that only a specified portion of the record shall be certified to the court as the record on appeal.

(3) If, upon hearing the appeal, it appears to the court that any testimony has been improperly excluded by the commission or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, the court shall refer the case back to the commission to take such evidence as the court may direct and report the evidence to the court with the commission's findings of fact and conclusions of law.

SOURCES: Codes, 1942, § 6047-15; Laws, 1960, ch. 173, § 15; Laws, 2009, ch. 337, § 1, eff from and after July 1, 2009.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54 et seq.

CJS. 36A C.J.S., Fish §§ 47 et seq.

§ 49-15-69. Exemption of certain minors, senior citizens or disabled persons from licensing requirements.

(1) Any resident citizen of the State of Mississippi (a) who is not over sixteen (16) years of age; or (b) who is sixty-five (65) years of age or more; or (c) who has been adjudged to have a service-connected one hundred percent (100%) disability, shall not be required to purchase or possess a license or permit, except as provided by subsection (2) of this section, or to pay any fee or charge when fishing for or taking for personal, noncommercial use the following: (a) crabs, (b) shrimps, or (c) oysters.

(2) The commission is hereby directed to promulgate and publish rules and regulations to implement the policy set forth in subsection (1) of this section. Such rules shall provide that persons exempted under subsection (1) of this section shall apply to the department for certification as to age or disability and shall be required to carry a certification card issued by the commission while engaged in taking above-mentioned marine life.

SOURCES: Laws, 1974, ch. 405; Laws, 2000, ch. 516, § 88, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Issuance to certain handicapped persons of special license to hunt deer and small game with a crossbow, see § 49-7-38.

§ 49-15-71. Commercial taking of redfish prohibited; unlawful to take below minimum size; penalties; redfish management plan.

(1) It is unlawful for any boat or vessel carrying or using a purse seine to have on board such boat or vessel any quantity of redfish within the territorial jurisdiction of the State of Mississippi.

(2) It is unlawful for any person, firm or corporation to catch, take or land redfish below minimum legal size as established by regulations promulgated by the commission and in accordance with the Red Drum Fishery Management Plan. The department shall develop a redfish management plan and the commission shall promulgate regulations to implement the plan after conducting a public hearing relating to the plan and regulations. Beginning on July 1, 1998, and every four (4) years thereafter, the commission shall review the plan and regulations promulgated under the plan, and upon a determination that revisions are appropriate, the commission shall amend the plan or regulations, or both, in a manner to effectuate the desired changes.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor and shall be fined in the amount of One Hundred Dollars ($100.00) for each redfish possessed in violation of this section. All nets used in violating this section are hereby declared contraband and shall be subject to seizure and forfeiture. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated. It shall be the duty of the court to order the forfeiture of any nets used in violating the provisions of this section. The fine imposed upon a person convicted under this section shall not be suspended or reduced. The master and owner of any vessel upon which redfish is possessed in violation of this section shall be jointly and severally liable for the penalty imposed herein.

(4) For the purposes of this section, the term "redfish" means red drum or sciaenops ocellatus.

SOURCES: Laws, 1986, ch. 497, § 1; Laws, 1990, ch. 579, § 1; Laws, 1994, ch. 603, § 2; Laws, 1994, ch. 578, § 23; Laws, 1997, ch. 601, § 3, eff from and after July 1, 1997.

Editor's Note — Laws of 1990, ch. 579, § 2, provided for the repeal of this section from and after July 1, 1994. Subsequently, Laws of 1994, ch. 603, § 1, amended Laws of 1990, ch. 579, § 2, so as to delete the repealer provision.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of the game and fish statutes and regulations, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

New wording of statute is intended to prohibit taking of redfish below minimum size by any means, including charter or commercial hook and line operations or net fishing; anyone who takes redfish is subject to penalty, regardless of method used to catch fish. Gill, Nov. 8, 1990, A.G. Op. #90-0668.

§ 49-15-73. Use of aircraft to assist in harvesting of redfish; penalties.

It shall be unlawful for any person to use or employ any aircraft in the airspace of this state to assist in the harvesting of redfish as defined in Section 49-15-71. Aircraft employed in any manner contrary to the provisions of this section shall not be registered, hangered, maintained, provisioned or serviced within this state, excepting in an emergency in which the lives of the pilot or crew of such aircraft are at risk. A person convicted of a violation of this section shall be punished as provided in Section 49-15-63, Mississippi Code of 1972. In addition to the penalty prescribed by such section, any aircraft and any equipment utilized in the taking of redfish contrary to the provisions of this section shall be subject to confiscation under this section.

SOURCES: Laws, 1986, ch. 497, § 2, eff from and after July 1, 1986.

§ 49-15-74. Open season for menhaden.

The commission shall establish open season for menhaden not later than the third Monday in April and ending no sooner than the second Tuesday in October.

SOURCES: Laws, 1997, ch. 579, § 14, eff from and after July 2, 1997.

§ 49-15-75. Catch limit based on weight limitations as to certain fish.

(1) It shall be unlawful for any person, firm or corporation using a purse seine or having a purse seine aboard a boat or vessel within the territorial waters of the State of Mississippi to catch in excess of five percent (5%) by weight in any single set of the net or to possess in excess of ten percent (10%) by weight of the total catch any of the following species: spotted seatrout (Cynscion nebulosus); bluefish (Pomatomus saltatrix); Spanish mackerel (Scomberomorus maculatus); king mackerel (Scomberomorus cavalla); dolphin (Corphaena hippurus); pompano (Trachinotus carolinus); cobia (Rachycentron canadum); or jack crevalle (Caranx hippos).

(2) A person, firm or corporation convicted of a violation of this section shall be punished as provided in Section 49-15-63, Mississippi Code of 1972.

SOURCES: Laws, 1986, ch. 497, § 3, eff from and after July 1, 1986.

§ 49-15-76. Prohibition of sale of game fish; exceptions; punishment.

(1) It is unlawful for any person to sell, barter or trade or to offer for sale, barter or trade any game fish enumerated in this chapter.

(2) Cobia may be sold in this state if the cobia is purchased from a state in which it may lawfully be caught and sold. Any individual, partnership, corporation or other entity which sells cobia in this state shall maintain documentation showing the state of purchase and date of purchase of cobia for a period of sixty (60) days from the date of purchase of the cobia. The Department of Marine Resources or any other law enforcement agency with which the department has a cooperating agreement may require any seller of cobia to document the date and state of purchase.

(3) Any person who cultivates a game fish as permitted under the Mississippi Aquaculture Act of 1988 may sell the game fish in accordance with the marine aquaculture program.

(4) A person who violates this section shall be punished as provided in Section 49-15-63.

SOURCES: Laws, 1997, ch. 488, § 2, eff from and after passage (approved March 27, 1997).

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 49-15-77. Prohibition against catching saltwater fish by use of certain nets, seines or traps in certain areas of the state; punishment.

(1) It is unlawful for any person, firm or corporation to catch, take or carry away any saltwater fish by or with any trammel nets, purse seines, seines, fish traps or other like contrivances except permitted eel traps, in any area of the State of Mississippi within one hundred (100) feet of the mouth of any river, bayou, creek, canal, stream, tributary, lake, bay, inlet or other water source entering into areas defined as salt waters under the jurisdiction of the commission.

(2) A person, firm or corporation convicted of a violation of this section shall be punished as provided in Section 49-15-100(2), Mississippi Code of 1972.

SOURCES: Laws, 1986, ch. 497, § 4; Laws, 1991, ch. 601, § 1; Laws, 1994, ch. 578, § 20; Laws, 1997, ch. 379, § 1, eff from and after July 1, 1997.

§ 49-15-78. Prohibition against using gill net, trammel net, entanglement net, or like contrivance within a certain distance of the shoreline; punishment.

(1) It is unlawful for a person to use a gill net, trammel net, entanglement net, or like contrivances for the taking of fish in marine waters within one-half (½) mile of the shoreline.

(2) A violation of this section is punishable by the penalties provided in Section 49-15-100, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 379, § 4; Laws, 2000, ch. 416, § 1, eff from and after July 1, 2000.

§ 49-15-79. Prohibition of use of purse seine offshore from Hancock or Harrison Counties; promulgation of regulations governing use of gill nets and trammel nets in Hancock, Harrison, and Jackson Counties; punishment.

(1) It is unlawful for any person, firm or corporation to use or attempt to use a purse seine for the taking of fish or to have such seine in the water within one (1) mile of the shoreline of the County of Hancock or Harrison in the State of Mississippi. The Boards of Supervisors of Hancock, Harrison and Jackson Counties shall have the authority to submit proposed regulations to the commission to regulate within their respective counties the use of and trammel nets. The commission may consider all such proposals submitted by the boards of supervisors in formulating regulations to be promulgated under this section.

(2) A person, firm or corporation convicted of a violation of this section or regulations promulgated under this section shall be punished by the penalties provided in Section 49-15-100(2), Mississippi Code of 1972.

SOURCES: Laws, 1986, ch. 497, § 5; Laws, 1991, ch. 601, § 2; Laws, 1994, ch. 578, § 24; Laws, 1997, ch. 379, § 2, eff from and after July 1, 1997.

§ 49-15-80. Vessels used to catch or transport fish; licensing and fees; nonresident reciprocity.

(1)(a) All vessels to be used in catching or transporting fish in the waters of the State of Mississippi for commercial purposes shall, before beginning operations, obtain an annual license from the commission and pay a license fee according to the following schedule:

(i) All resident vessels engaged in commercial hook and line or gig fishing shall be issued an annual license by the commission at a fee of One Hundred Dollars ($100.00). All nonresident vessels engaged in commercial hook and line or gig fishing shall be issued an annual license by the commission at a fee of Four Hundred Dollars ($400.00). Each individual engaged in commercial hook and line or gig fishing must obtain a commercial fisherman license subject to the following license fees: One Hundred Dollars ($100.00) for a resident commercial fisherman license; or Four Hundred Dollars ($400.00) for a nonresident commercial fisherman license. If a duly licensed commercial hook and line or gig fishing vessel is engaged in commercial fishing, each individual aboard must possess a commercial fisherman license.

(ii) A resident fee of One Hundred Dollars ($100.00) or a nonresident fee of Four Hundred Dollars ($400.00), on boats using trammel nets, gill nets or seines not more than one thousand two hundred (1,200) feet in length.

(b) Beginning September 15, 1994, no nonresident shall be issued a commercial fishing license under this chapter for the taking of fish using any type of net if that nonresident's state of domicile prohibits the issuing of commercial fishing licenses to residents of this state to engage in like activity.

(2) Each factory or manufacturing establishment engaging in the manufacture of oil, fish scrap, fish meal, fertilizer or other products from menhaden, shall pay a license fee of Five Hundred Dollars ($500.00).

(3) Each boat or vessel engaging in the catching, taking or transporting menhaden in the waters of the State of Mississippi, the sum of One Hundred Dollars ($100.00) and shall pay Fifty Dollars ($50.00) on each net, seine, trawl or purse net used in catching or taking menhaden in the waters of the State of Mississippi.

SOURCES: Laws, 1997, ch. 579, § 15; Laws, 1999, ch. 519, § 6; Laws, 2001, ch. 466, § 1, eff from and after July 1, 2001.

§ 49-15-81. Catching or transporting saltwater minnows for sale; license requirements; fees; tagging of minnow traps to mark ownership; exemptions.

(1) The term "saltwater minnow" as used in this section shall mean any species within the families Cyprinodontidae, Fundulidae or Poeciliidae.

(2) Before beginning operations to catch or transport saltwater minnows for sale, fishermen must obtain a saltwater live bait license and pay a fee according to the following schedule: A resident shall pay a fee of Fifty Dollars ($50.00), a nonresident shall pay a fee of One Hundred Dollars ($100.00) or if the nonresident's domicile state charges more than One Hundred Dollars ($100.00) for residents of Mississippi to engage in a like activity, then that applicant shall pay the same fee or fees that the applicant's domicile state charges residents of Mississippi.

(3) All minnow traps placed in or on the marine waters of the State of Mississippi shall have a corrosion resistant metal or plastic tag attached to the trap to permanently mark the minnow traps for ownership. The tag used to mark the traps shall be legibly and permanently stamped with letters containing the applicable licensed minnow fishermen's full name. The minimum height of the letters shall be at least three-sixteenths (3⁄16) of an inch. The tags shall be supplied by the minnow fisherman.

(4) Licensed live bait catcher boats and licensed live bait dealers involved in the transporting of minnows are exempt from the commercial minnow licensing requirement in subsection (2) of this section.

SOURCES: Laws, 2008, ch. 373, § 1; Laws, 2011, ch. 325, § 1, eff from and after passage (approved Mar. 9, 2011.)

Editor's Note — A former § 49-15-81, enacted by Laws of 1986, ch. 497, § 6, and entitled "Bureau of Marine Resources to recommend maximum sustained yields of commercial and recreational marine species," was repealed by Laws of 1994, ch. 578, § 65, effective from and after July 1, 1994. For present similar provisions, see § 49-15-315.

Amendment Notes — The 2011 amendment inserted "Fundulidae" preceding "or Poecilidae" at the end of (1).

Cross References — Wholesale minnow dealers, see § 49-7-29.

Live bait catcher boat and live bait dealer privilege taxes, see § 49-15-64.4.

§ 49-15-83. Interpretation and application of Sections 49-15-71 through 49-15-81.

Nothing in Sections 49-15-71 through 49-15-81 shall be interpreted to circumvent or diminish the powers of the commission in the exercise of its jurisdiction and authority as provided under this chapter.

SOURCES: Laws, 1986, ch. 497, § 7; Laws, 1994, ch. 578, § 21; Laws, 1997, ch. 579, § 23, eff from and after July 2, 1997.

§ 49-15-84. Requirements for the taking of crabs; crab traps.

(1) The commission shall coordinate with the Gulf Coast Research Laboratory in the development of an ordinance for the purpose of taking Callinectes sapidus (blue crab) or allied species. The ordinance shall include provisions for the establishment of size limits for individual or market use as well as establishing legal harvest size for the cultivating of peeler crabs and soft-shell crabs.

(2) The commission shall establish specifications for crab traps and shall require buoys of adequate size which are identified as to the owner of the buoys and traps. Recreational crabbers may use no more than six (6) crab traps per household. The taking of crabs with drop nets is permitted without a license.

(3) It is unlawful to catch, hold or have in possession any female sponge crab or any female crab bearing visible eggs at any time. It is not unlawful to catch those crabs unintentionally, if the crabs are immediately returned to the water.

SOURCES: Laws, 1997, ch. 579, § 16; Laws, 2002, ch. 525, § 1, eff from and after July 1, 2002.

§ 49-15-84.1. Closed season for use of crab traps; removal of abandoned traps.

(1) The commission may establish a closed season for the use of crab traps in the public waters of this state. The commission may designate the closed season as not less than ten (10) days nor more than thirty (30) days per year. Any crab trap remaining in the public waters after the expiration to the seventh day of a closed season may be considered as abandoned under the regulations established by the commission.

(2) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

(a) The conservation and management of crab resources;

(b) Boating safety;

(c) The cleanliness of the beds and bottoms of the public waters of the state; and

(d) Enforcement of this chapter.

(3) Abandoned crab traps are litter and are subject to immediate removal and disposal.

SOURCES: Laws, 2002, ch. 525, § 2, eff from and after July 1, 2002.

§ 49-15-85. Repealed.

Repealed by Laws of 2002, ch. 525, § 3, eff from and after July 1, 2002. [Laws, 1988, ch. 548, § 2, eff from and after July 1, 2002.]

Editor's Note — Former § 49-15-85 prohibited the taking and possession of female egg-bearing crabs.

§ 49-15-86. Commercial and recreational crabbing licenses.

(1) Each person catching or taking any saltwater crabs in the waters of the State of Mississippi for commercial purposes shall obtain a license from the commission and shall pay an annual resident license fee of Seventy-five Dollars ($75.00) or an annual nonresident license fee of Two Hundred Dollars ($200.00) on each boat used therefor.

(2) The commission may require a recreational crabber's license for an administrative fee not to exceed Five Dollars ($5.00).

SOURCES: Laws, 1997, ch. 579, § 17, eff from and after July 2, 1997.

§ 49-15-87. "Peeler crab" and "soft-shell crab" defined.

(a) "Peeler crab" means a blue crab having a new soft shell fully developed under the hard shell and having a definite white, pink or red line or rim on the outer edge of the back fin or flipper.

(b) "Soft-shell crab" means a peeler crab which has recently shed its hard shell.

SOURCES: Laws, 1988, ch. 548, § 3, eff from and after July 1, 1988.

§ 49-15-89. Unlawful to catch, destroy, confine, hold or have in possession certain crabs.

It shall be unlawful for any person to catch, destroy, confine, hold or have in his possession, whether for individual use or for market, any of the genus callinectes sapidus (blue crab) or allied species, of a smaller size than five (5) inches measured from the tip of one (1) lateral spine across the back of the shell to the tip of the opposite lateral spine; provided that peeler crabs and soft-shell crabs are exempt from these limitations. Conservation officers may inspect any catch for violations of any of the provisions of Sections 49-15-83 through 49-15-91.

SOURCES: Laws, 1988, ch. 548, § 4, eff from and after July 1, 1988.

Cross References — Penalty for violating this section, see § 49-15-93.

§ 49-15-91. Regulatory authority for maximum number of crab pots allowable per licensee.

The commission may establish a maximum number of crab pots allowable per licensee.

SOURCES: Laws, 1988, ch. 548, § 5, eff from and after July 1, 1988.

§ 49-15-92. Penalties for theft of crab traps or crabs.

(1) Any person who steals, takes and carries away crab traps or the property of another used to catch saltwater crabs, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or imprisoned for not more than ninety (90) days, or both, for the first offense; for the second offense, when the offense is committed within three (3) years of the first offense, shall be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00); for the third and subsequent offenses when committed within three (3) years of the first offense, shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Four Thousand Dollars ($4,000.00) or imprisoned for not more than six (6) months.

(2) Any person, firm or corporation convicted and sentenced under this section for a second or subsequent offense shall not be considered for a reduction of the fine.

(3) In addition to the penalties in subsection (1), any person who steals, removes, takes or carries away the crabs from another person's crab traps shall also pay restitution to the owner of the traps for the crabs taken.

(4) This section shall not apply to any person who removes crab traps that are illegally placed or in an illegal location. This section shall not apply to any person who catches abandoned crab traps in a shrimp trawl, keeps the crab traps aboard the vessel and properly disposes of the crab traps.

SOURCES: Laws, 2003, ch. 403, § 1, eff from and after July 1, 2003.

Editor's Note — Laws of 2003, ch. 403, § 2, provides:
"SECTION 2. Section 97-17-58, Mississippi Code of 1972, which establishes penalties for theft of crab pots, is repealed."

§ 49-15-93. Penalties.

Any person violating any provision of Sections 49-15-83 through 49-15-91 shall be guilty of a misdemeanor and upon conviction shall be punished as provided by Section 49-15-63, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 548, § 6, eff from and after July 1, 1988.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 49-15-94. Use of purse seine to catch mullet during roe mullet season; penalties.

It is unlawful for any person to use a purse seine to catch mullet during the roe mullet season. A violation of this subsection is punishable by the penalties provided in Section 49-15-100(2) for the unlawful use of gill or trammel nets.

SOURCES: Laws, 1994 Ex Sess, ch. 28, § 4; Laws, 1996, ch. 355, § 1, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

§ 49-15-95. Use of brill and cast nets.

(1) It is unlawful to use brill and cast nets greater than twelve (12) feet in radius in the marine waters of the state.

(2) The commission shall not prohibit the use of brill and cast nets in the waters designated in subsection (1) of this section. No person shall catch more than fifty (50) pounds of shrimp per day using brill and cast nets as provided by this section.

SOURCES: Laws, 1992, ch. 550, § 3; Laws, 1994, ch. 578, § 25; Laws, 2001, ch. 351, § 1, eff from and after July 1, 2001.

Editor's Note — Laws of 1992, ch. 550, § 1, effective from and after July 1, 1992, provides as follows:

"SECTION 1. The Legislature finds that:

(a) Live bait fishery is essential to the recreational fishing and tourist industry in Mississippi;

(b) To protect and preserve our valuable shrimp resources, certain waters of the state have been closed to commercial shrimping activities;

(c) To further protect the population of shrimp resources, the amount of live bait shrimp harvested from those waters closed to commercial shrimping must be limited; and

(d) A limit on the amount of live bait shrimp sold to a person per day is vital to the effective management and preservation of this natural resource."

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 49.

CJS. 36A C.J.S., Fish § 35.

§ 49-15-96. Keeping of certain fish caught in shrimp nets for personal consumption.

Vessels licensed under Section 49-15-64.5 may keep in whole, for personal consumption only the following types of fish which are caught in the shrimp nets or trawls of the vessel: white trout; croaker, black drum, and ground mullet (Family Sciaenidae); sheepshead (Family Sparidae); gafftopsail catfish (Family Ariidae); and flounder (Family Bothidae and Family Pleuronectidae). The cumulative total of fish shall not exceed twenty-five (25) pounds. In addition, a vessel may keep three (3) dozen blue crabs (portunidae family). This exemption for personal consumption does not apply to fish or crabs that are otherwise illegal to possess or catch.

SOURCES: Laws, 1994, ch. 610, § 1; Laws, 1997, ch. 579, § 24; Laws, 2000, ch. 476, § 1, eff from and after July 1, 2000.

§ 49-15-97. Requirement that commercial fishing vessels use approved lights; penalties.

(1) It shall be unlawful for any commercial fisherman, firm or corporation to operate a vessel during the hours of sunset to sunrise when the season or time for such fishing is closed or in an area that is closed to fishing without using or displaying lights which comply with all federal regulations applicable to that vessel operated by the fisherman, firm or corporation.

(2) For the purpose of this section, the term "commercial fisherman" shall mean a commercially licensed boat, commercially licensed fisherman or any person in possession of commercial fishing gear who would be subject to regulation under this chapter.

(3) Any person, firm or corporation that violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Two Hundred Fifty Dollars ($250.00) or more than Five Hundred Dollars ($500.00) for the first offense; and not less than Five Hundred Dollars ($500.00) or more than One Thousand Dollars ($1,000.00) for the second offense when the second offense is committed within a period of three (3) years after the date on which the first offense was committed; and not less than Two Thousand Dollars ($2,000.00) or more than Four Thousand Dollars ($4,000.00) or imprisonment in the county jail for a period of not more than thirty (30) days for a third or subsequent offense when that offense is committed within a period of three (3) years after the date on which the first offense was committed.

Any fine or sentence, or both, imposed upon a person for a second, third or subsequent offense under this section shall not be suspended or reduced.

SOURCES: Laws, 1994, ch. 344, § 1, eff from and after July 1, 1994.

§ 49-15-98. Repealed.

Repealed by Laws of 2001, ch. 381, § 1, eff from and after July 1, 2001.

[Laws, 1994, ch. 579, § 1, eff from and after July 1, 1994.]

Editor's Note — Former § 49-15-98 prohibited the operation of a commercial fishing vessel at night without using or displaying lights.

§ 49-15-99. Repealed.

Repealed by Laws of 1994 Ex Sess, ch. 28, § 3, eff from and after passage (approved August 24, 1994).

[Laws, 1994, ch. 579, § 2, eff from and after July 1, 1994]

Editor's Note — Former § 49-15-99 was entitled: Establishment of season for taking roe mullet. For similar provisions, see § 49-15-94.

§ 49-15-100. Usage of gill or trammel nets in certain marine waters; penalties.

(1) It is unlawful for any person, firm or corporation to set a gill or trammel net in the marine waters of the state north of Highway 90.

(2)(a) For a first offense, a violation of this section is punishable by a fine of not less than Two Thousand Dollars ($2,000.00), nor more than Four Thousand Dollars ($4,000.00) and the department may initiate forfeiture proceedings for the net and catch. For subsequent violations, a person is subject to a fine of not less than Four Thousand Dollars ($4,000.00), nor more than Ten Thousand Dollars ($10,000.00) and shall forfeit nets and catch. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated.

(b) The penalties for a violation of this section shall not be suspended or reduced.

SOURCES: Laws, 1994, ch. 579, § 3; Laws, 1994 Ex Sess, ch. 28, § 2; Laws, 1997, ch. 601, § 4, eff from and after July 1, 1997.

§ 49-15-100.1. Forfeiture of vessels, motors and equipment used in violation of Section 49-15-100.

It is unlawful for any person, firm or corporation to set a gill or trammel net in the marine waters of the state north of Highway 90. Any person, firm or corporation violating this section shall be punished as provided for under Section 49-15-100 and in addition shall forfeit vessel, motor and equipment used in the violation. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated.

SOURCES: Laws, 1995, ch. 611, § 2; Laws, 1997, ch. 601, § 5, eff from and after July 1, 1997.

§ 49-15-100.3. Prima facie evidence of use of prohibited equipment.

The possession of a gill net, trammel net or like contrivance, or any other equipment prohibited for use in the taking or harvesting of seafood under this chapter on a vessel on the marine waters of this state where the use of the net, contrivance or equipment is prohibited, shall constitute prima facie evidence that an offense has been committed to take or harvest seafood with nets, contrivances or equipment prohibited by this chapter, unless the vessel is:

(a) Anchored or moored at a permanent facility intended for the mooring of vessels;

(b) Traveling directly between a marina, harbor or public boat launching facility and a United States Coast Guard marked and maintained navigation channel; or

(c) Traveling within a United States Coast Guard marked and maintained navigation channel.

SOURCES: Laws, 1995, ch. 611, § 3; Laws, 2000, ch. 344, § 1, eff from and after July 1, 2000.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation §§ 54, 56.

CJS. 38 C.J.S., Game; Conservation and Preservation of Wildlife §§ 6, 16-19.

Article 3.

Gulf States Marine Fisheries Compact.

Sec.
49-15-101. Form of compact.
49-15-103. Membership of Gulf States Marine Commission.
49-15-105. Cooperation of state officers and agencies.
49-15-107. Powers of commission.
49-15-109. Records and reports.

§ 49-15-101. Form of compact.

The Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Mississippi with any one or more of the states of Florida, Alabama, Texas, and Louisiana, and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two (2) or more of the states of Florida, Alabama, Texas, Louisiana and Mississippi have ratified it and the Congress has given its consent, pursuant to Article I, Section 10, of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three (3) representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One (1) shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains or, if there be more than one (1) officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The legislative membership shall alternate between the Mississippi Senate and House of Representatives and the designated member shall be a member of the Senate Ports and Marine Resources Committee or the House Marine Resources Committee. The term shall be six (6) years. No legislative member from the Mississippi Senate or House of Representatives shall serve two (2) consecutive terms. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states. To that end the commission shall draft and recommend to the governors and legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of that state in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto, and when two (2) or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial saltwater fishermen and the saltwater anglers and such other interests of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article

II, the participation of such state in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two (2) or more states party hereto may further amend this compact by acts of their respective legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such states as shall so compact, and at their joint expense. The representatives of such states shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted but the creation of such section shall not be deemed to deprive the states so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the states party hereto. Such initial appropriations as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$ 3,600.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	$13,100.00

The proration and total cost per annum of Thirteen Thousand One Hundred Dollars ($13,100.00), above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission. Each state party hereto agrees to provide in the manner most acceptable to it, the travel cost and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall not become effective until six (6) months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given the other states party hereto by the secretary of state of compacting state so renouncing upon passage of the act.

SOURCES: Laws, 1950, ch. 556, § 1; Laws, 1983, ch. 444; Laws, 1994, ch. 578, § 26; Laws, 2006, ch. 393, § 1, eff from and after July 1, 2006.

Comparable Laws from other States — Alabama Code, §§ 9-12-180 through 9-12-184.

Florida: Fla. Stat. § 379.2254.

Louisiana Revised Statutes Annotated, §§ 56:71 et seq.

Texas: Tex. Parks & Wild. Code § 91.008.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 33.

CJS. 36A C.J.S., Fish § 10.

§ 49-15-103. Membership of Gulf States Marine Commission.

In pursuance of Article III of said compact there shall be three (3) members (hereinafter called commissioners) of the Gulf States Marine Commission (hereinafter called commission) from the State of Mississippi. The first commissioner from the State of Mississippi shall be president of the Mississippi Seafood Commission of the State of Mississippi ex-officio; and the term of any such ex-officio commissioner shall terminate at the time the said commissioner ceases to hold said office of president of the Mississippi Seafood Commission, and his successor as a member of this commission shall be his successor as president of the Mississippi Seafood Commission. The second commissioner from the State of Mississippi shall be a legislator; and the term of any such ex-officio commissioner shall terminate at the time he ceases to hold said legislative office, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner, who shall have a knowledge of the marine fisheries problems. The term of said commissioner shall be for a period of three (3) years and, in addition, he shall serve until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The president of the Mississippi Seafood Commission, as ex-officio commissioner, may delegate from time to time, to any deputy or other member of the Mississippi Seafood Commission, the power to be present and participate, including voting as his representative, or substitute at any meeting of or hearing by or other proceeding of the commission.

SOURCES: Laws, 1950, ch. 556, § 2; Laws, 2006, ch. 393, § 2, brought forward without change effective July 1, 2006.

§ 49-15-105. Cooperation of state officers and agencies.

All officers of the State of Mississippi are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of the State of Mississippi to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of the State of Mississippi are hereby authorized and directed, at convenient times and upon request of the said commission, to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

SOURCES: Laws, 1950, ch. 556, § 3, eff from and after passage (approved January 17, 1950).

§ 49-15-107. Powers of commission.

There is hereby granted to the commission and the commissioners thereof all the powers provided in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. Said powers shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Mississippi, or by the terms of said compact.

SOURCES: Laws, 1950, ch. 556, §§ 3 and 4, eff from and after passage (approved January 17, 1950).

§ 49-15-109. Records and reports.

The commissioner shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Mississippi on or before the tenth day of February in each year, setting forth in detail the transactions conducted by it during the twelve (12) months preceding January 1st of that year, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Mississippi which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The auditor of the State of Mississippi is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, and such other items referring to its financial standing as such auditor may deem proper, and to report the results of such examination to the Governor of the state.

SOURCES: Laws, 1950, ch. 556, § 5, eff from and after passage (approved January 17, 1950).

Editor's Note — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

ARTICLE 4.

PROCEDURES FOR FORFEITURE OF PROPERTY SEIZED IN MARINE VIOLATIONS.

SEC.
49-15-201. Institution of forfeiture proceedings; petition for forfeiture; inquiry into ownership, lien, or other security interest in seized motor vehicle, aircraft, or other personal property subject to forfeiture; notice of forfeiture hearing to any person holding interest in seized property.
49-15-203. Answer; hearing in contested cases; order of forfeiture; rights of parties holding liens or security interests in property subject to forfeiture.
49-15-205. Liquidation of forfeited property; distribution of proceeds from forfeited property; maintenance, repair, use and operation of forfeited property by law enforcement agencies or Department of Marine Resources.
49-15-207. Administrative forfeiture procedure for property with value not exceeding certain threshold.

§ 49-15-201. Institution of forfeiture proceedings; petition for forfeiture; inquiry into ownership, lien, or other security interest in seized motor vehicle, aircraft, or other personal property subject to forfeiture; notice of forfeiture hearing to any person holding interest in seized property.

(1) Except as otherwise provided in Section 49-15-207, when any property is seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, proceedings under this section shall be instituted promptly. The seizing law enforcement agency may, in the sound exercise of discretion, decide not to bring a forfeiture action if the interests of bona fide lien holders or secured creditors equal or exceed the value of the seized property, or if other factors would produce a negative economic result. No property shall be subject to forfeiture which has been stolen from its owner if the owner can be identified and prosecution for the theft has been initiated.

(2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is

brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Department of Marine Resources or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lien holder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Department of Marine Resources or the local law enforcement agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Department of Marine Resources or the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the Department of Marine Resources or the local law enforcement agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security

device affects the property, then the Department of Marine Resources or the local law enforcement agency shall make inquiry as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Department of Marine Resources or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the Department of Marine Resources or the local law enforcement agency shall cause any record owner and also any lien holder, secured party, other person who holds an interest in the property in the nature of a security interest which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(9) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the Department of Marine Resources or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, Mississippi Code of 1972, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(10) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (7) of this section shall be introduced into evidence at the hearing.

SOURCES: Laws of 2002, ch. 340, § 1, eff from and after July 1, 2002.

Editor's Note — Laws, 2002, ch. 340 codified Section 1 through 4 of that act as Sections 49-15-201 through 49-15-207. The sections were initially set out in 2002 as Sections 49-15-401 through 49-15-407, but have now been moved to their appropriate location as codified by the Legislature.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State

Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Seizure and forfeiture of vessels, outboard motors, boats and trailers with altered identification numbers or marks, see § 59-21-33.

Mississippi Motor Vehicle Title Law, see §§ 63-21-1 et seq.

§ 49-15-203. Answer; hearing in contested cases; order of forfeiture; rights of parties holding liens or security interests in property subject to forfeiture.

(1) Except as otherwise provided in Section 49-15-207, an owner of property that has been seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the Department of Marine Resources or the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court, if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the Department of Marine Resources, the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest or other interest in the nature of a security interest to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the Department of Marine Resources or the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lien holder, secured party, other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the Department of Marine Resources or the local law enforcement agency.

SOURCES: Laws, 2002, ch. 340, § 2, eff from and after July 1, 2002.

§ 49-15-205. Liquidation of forfeited property; distribution of proceeds from forfeited property; maintenance, repair, use and operation of forfeited property by law enforcement agencies or Department of Marine Resources.

(1) All other property which is forfeited under Sections 49-15-201 through 49-15-207, and except as provided in subsections (2), (5) and (6) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) If only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) If more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and fifty percent (50%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. If the other participating law enforcement agencies cannot agree on the division of their fifty percent (50%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(2) All money which is forfeited under Sections 49-15-201 through 49-15-207 shall be divided, deposited and credited in the same manner as set forth in subsection (1) of this section.

(3) All property forfeited, deposited and credited to the Department of Marine Resources under Sections 49-15-201 through 49-15-207 shall be forwarded to the State Treasurer and deposited in the Seafood Fund for use by the Department of Marine Resources upon appropriation by the Legislature.

(4) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lien holder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (1) of this section.

(5) Any state, county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property or money that has been forfeited to the agency if it is free from any interest of a bona fide lien holder, secured party or other party who holds an interest in the property in the nature of a security interest. Such state, county or municipal law enforcement agency may purchase the interest of a bona fide lien holder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (7) of this section.

(6) The Department of Marine Resources may maintain, repair, use and operate for official purposes all property, other than money that has been forfeited to the Department of Marine Resources if it is free from any interest of a bona fide lien holder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the Department of Marine Resources may purchase the interest of a bona fide lien holder, secured party, or other party who holds an interest so that such property can be released for use by the department.

The Department of Marine Resources may maintain, repair, use and operate such property with money appropriated to the department for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the Department of Marine Resources is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (7) of this section.

(7) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SOURCES: Laws, 2002, ch. 340, § 3, eff from and after July 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Motor Vehicle Title Law, see §§ 63-21-1 et seq.

§ 49-15-207. Administrative forfeiture procedure for property with value not exceeding certain threshold.

(1) When any property the value of which does not exceed Five Thousand Dollars ($5,000.00), is seized pursuant to Section 49-15-21 or 59-21-33, Mississippi Code of 1972, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt requested, to all persons who are required to be notified pursuant to Section 49-15-201(2).

(3) If the notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the laws under the jurisdiction of the Department of Marine Resources;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the seizing law enforcement agency, within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(6) If no request for judicial review is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 49-15-205.

(7) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in Section 49-15-201.

SOURCES: Laws, 2002, ch. 340, § 4, eff from and after July 1, 2002.

ARTICLE 5.

MISSISSIPPI COMMISSION ON MARINE RESOURCES.

SEC.
49-15-301. Mississippi Commission on Marine Resources; powers and duties;

membership; chairman; rules and regulations; marine resources technical advisory council; definitions.
49-15-303. Powers and duties of commission.
49-15-304. Promulgation of regulations regarding marine resources.
49-15-305. Executive director; nomination; powers and duties.
49-15-307. Powers and duties of department.
49-15-309. Establishment of saltwater recreational fishing record list.
49-15-311. Authority of department to purchase physical loss and liability coverage insurance.
49-15-313. Saltwater sports fishing license; separate annual license for charter boat fishing, party boat fishing, head boat and guide boat fishing; proof of random drug testing participation and of liability insurance required; exemptions from licensing requirements; disposition of fees; free fishing weekend; free fishing day.
49-15-315. Unlawful to engage in commercial harvesting of crabs, oysters, shrimp, bait shrimp or saltwater fish in certain marine waters; exceptions; Gulf Coast Research Laboratory to study estuaries and bays deemed to be nurseries; department to set limits on all catches for noncommercial use; penalties.
49-15-317. Certain charter or recreational fishing boats authorized to fillet certain fish at sea.
49-15-319. Filing float plan; effect of failure to file.
49-15-321. Commission authorized to establish sanctuaries and nursery grounds; unlawful to engage in prohibited activity in designated sanctuary or nursery area.
49-15-323. Commission to have jurisdiction over certain violations of marine resources law or regulations committed in the Gulf of Mexico outside state's territorial waters.

§ 49-15-301. Mississippi Commission on Marine Resources; powers and duties; membership; chairman; rules and regulations; marine resources technical advisory council; definitions.

(1) The Mississippi Commission on Marine Resources is hereby established and full power is vested in the commission to regulate all matters pertaining to all saltwater aquatic life and marine resources. The commission shall administer the Coastal Wetlands Protection Law and the Public Trust Tidelands Act. The power and duties of the commission shall be exercised through the Department of Marine Resources.

(2) On July 1, 2002, the commission shall be reconstituted. The terms of the nonseafood industry member and the member of the Commission on Wildlife, Fisheries and Parks shall expire July 1, 2002. The remaining five (5) members serving on July 1, 2002 shall compose the reconstituted commission and shall continue to serve until the expiration of their terms. The reconstituted Mississippi Commission on Marine Resources shall consist of five (5) members to be appointed as follows:

(a) The Governor shall appoint five (5) members who shall be residents of Jackson, Harrison and Hancock Counties with the advice and consent of the Senate. The Governor shall appoint at least one (1) member from each county but not more than two (2) members from any one (1) county. The members designated in subparagraphs (i), (ii) and (iv) must be a resident of the county where the business he is appointed to represent is located.

(b) The commission shall be composed as follows:

(i) One (1) member shall be a commercial seafood processor.

(ii) One (1) member shall be a commercial fisherman.

(iii) One (1) member shall be a recreational sports fisherman.

(iv) One (1) member shall be a charter boat operator.

(v) One (1) member shall be a member of an incorporated nonprofit environmental organization.

(c) Of the initial members appointed by the Governor, the members designated in subparagraphs (i),(ii) and (iii) shall serve for an initial term of two (2) years and one (1) member shall be appointed from each county. The members designated in subparagraphs (iv) and (v) shall serve an initial term of four (4) years. All terms after the initial terms shall be for a period of four (4) years.

(d) Any vacancy in the office of an appointed member of the commission shall be filled by appointment by the Governor for the balance of the unexpired term.

(3) Each member shall have a demonstrated history of involvement in the matter of jurisdiction for which he is appointed to represent and his employment and activities must not conflict with the matter of jurisdiction represented. A member shall not have a record of conviction of violation of fish and game or seafood laws or regulations within the five (5) years preceding his appointment or a record of any felony conviction. After July 1, 1999, if a member is convicted of a violation of the seafood laws during his term, his office shall be deemed vacant and the Governor shall fill the vacancy as provided in this section.

(4) The commission shall elect a chairman who shall preside at all meetings of the commission, and the commission shall also elect a vice-chairman who shall serve in the absence or inability of the chairman.

(5) Each member shall be paid actual and necessary expenses incurred in attending meetings of the commission and in performing his duties away from his domicile under assignment by the commission. In addition, members shall receive the per diem authorized in Section 25-3-69, Mississippi Code of 1972.

(6) The commission shall adopt rules and regulations governing times and places of meetings and shall adopt bylaws governing the manner of conducting its business. Each member shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and shall, before assuming office, enter into bond in the amount of Thirty Thousand Dollars ($30,000.00), to be approved by the Secretary of State conditioned according to law and payable to the State of Mississippi.

(7) The commission shall not take any action, except by vote in meeting assembled, and such action shall be included in the minutes of the commission. A majority of the members shall constitute a quorum of the commission.

(8) The commission, through the Department of Marine Resources, shall devise a plan to make licenses available in each coastal county.

(9)(a) There is hereby created a marine resources technical advisory council composed of the Executive Director of the Gulf Coast Research Lab, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; and the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee.

(b) The council shall give technical assistance to the commission.

(10) For purposes of this section the following definitions apply:

(a) "Charter boat operator" means an individual who operates a vessel for hire guiding sports fishermen for a fee and is duly licensed to engage in such activity in the State of Mississippi.

(b) "Commercial fisherman" means a fisherman who sells, barters or exchanges any or all of his catch or who is paid for attempting to catch marine species, and is duly licensed to engage in commercial fishing.

(c) "Commercial seafood processor" means an individual who engages in the business of purchasing seafood products and preparing them for resale and who is duly licensed to engage in such commercial activity in the State of Mississippi.

(d) "Incorporated environmental nonprofit organization" means an organization duly incorporated in any state as a nonprofit organization and whose stated goals and purposes are the conservation of natural resources.

(e) "Recreational sports fisherman" means an individual who catches or harvests marine species only for recreation or personal consumption and not for sale. The individual must possess a saltwater sports fishing license, be a member of an incorporated nonprofit sports fishing organization and not possess a commercial fishing or seafood processor license.

SOURCES: Laws, 1994, ch. 578, § 1; Laws, 1999, ch. 585, § 5, eff from and after July 1, 1999.

Cross References — Public Trust Tidelands, see §§ 29-15-1 et seq.

Attorney General shall be counsel and attorney for the Mississippi Commission on Marine Resources, see § 49-15-19.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

ATTORNEY GENERAL OPINIONS

The Commission on Marine Resources does not have the authority to establish criminal penalties under the Seafood Chapter of the Mississippi Code for violations of its ordinances. Gusa, November 20, 1998, A.G. Op. #98-0692.

Until such time as the Mississippi Commission on Marine Resources is reconstituted in 2002, it must have in its membership two members from each coastal county; thus, if a board member appointed to represent one coastal county moves to another coastal county, the move will result in a vacancy requiring special appointment by the Governor. Woods, June 2, 2000, A.G. Op. #2000-0286.

The members of the Mississippi Commission on Marine Resources designated to represent the commercial seafood processors, commercial fishermen, charter board operators, and nonseafood industry must be residents of the county in which their business is located; thus, if an individual representing one of these industries moves to another county, that will create a vacancy for which a special appointment will need to be made. Woods, June 2, 2000, A.G. Op. #2000-0286.

Until the reconstituting of the Commission on Marine Resources in July 1, 2002, the board must have members as detailed in the pre-amendment version of the statute, Janus, Oct. 5, 2001, A.G. Op. #01-0612.

Appointments made by the Governor in vacation and not confirmed by the Senate, but who have taken the oath of office, may be "de facto" officers; and actions taken by "de facto" officers are valid. Janus, Oct. 5, 2001, A.G. Op. #01-0612.

§ 49-15-303. Powers and duties of commission.

The commission shall have the following powers and duties:

(a) To formulate the policy of the department regarding marine resources within the jurisdiction of the department;

(b) To enter into and authorize the executive director to execute contracts, grants and cooperative agreements with any public or private institution, federal or state agency or any subdivision thereof to carry out the duties of the commission;

(c) To adopt, amend or repeal any rules and regulations necessary for the operation of the commission and the department necessary for the protection, conservation and propagation of seafood, and necessary for the management of commercial and recreational taking of seafood; and

(d) To discharge other duties and powers as are necessary to implement state policy regarding marine resources.

SOURCES: Laws, 1994, ch. 578, § 2; Laws, 1999, ch. 558, § 4, eff from and after passage (approved Apr. 21, 1999.)

§ 49-15-304. Promulgation of regulations regarding marine resources.

The commission may adopt, modify or repeal rules or regulations to utilize, manage, conserve, preserve and protect the flora, fauna, tidelands, coastal wetlands, coastal preserves, marine waters and any other matter pertaining to marine resources under its jurisdiction. Rules and regulations adopted by the commission shall be consistent with the public policy expressed in Section 29-15-3 (public trust tidelands), Section 39-7-3 (antiquities and historic preservation), Section 49-15-1 (seafood), Section 49-17-3 (pollution control), Section 49-27-3 (coastal wetlands protection) and Section 57-15-6 (coastal zone management). The commission may make exceptions to and grant variances from any rules and regulations adopted by the commission. The commission shall give due consideration to permissable uses of the natural resources within its jurisdiction when promulgating rules and regulations.

SOURCES: Laws, 2000, ch. 618, § 1, eff from and after passage (approved May 23, 2000.)

§ 49-15-305. Executive director; nomination; powers and duties.

(1) The commission shall submit three (3) nominees for the position of executive director to the Governor. The Governor shall appoint the executive director from the list of nominees with the advice and consent of the Senate. The commission may remove the executive director from office for good cause. The executive director shall be knowledgeable and experienced in marine resources management.

(2) The executive director of the department shall have the following powers and duties:

(a) To supervise and direct all administrative, inspection and technical activities and personnel of the department;

(b) To employ qualified professional personnel in the subject matter or fields, and any other technical and clerical staff as may be required for the operation of the department;

(c) To coordinate all studies in the State of Mississippi concerned with the supply, development, use and conservation of marine resources;

(d) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at any other times as may be required by the Legislature or Governor, a full report of the work of the department, including a detailed statement of expenditures of the department and any recommendations the department may have;

(e) To enter into cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with studies and investigations pertaining to marine resources, provided the agreements do not have a financial cost in excess of the amounts appropriated for the purposes by the Legislature; and

(f) To carry out all regulations and rules adopted by the commission and enforce all licenses and permits issued by the department.

SOURCES: Laws, 1994, ch. 578, § 4; Laws, 1999, ch. 558, § 5, eff from and after passage (approved Apr. 21, 1999.)

ATTORNEY GENERAL OPINIONS

There is no authority for the Mississippi Commission on Marine Resources to adopt a regulation or rule which would require an individual seeking the position of executive director to have qualifications which are more stringent than those set out in the statute, i.e, a degree in a certain field of study. Gollott, Apr. 3, 2002, A.G. Op. #02-0174.

§ 49-15-307. Powers and duties of department.

The department shall have the following powers and duties:

(a) To implement the policy of the commission regarding marine resources within the jurisdiction of the department;

(b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(c) To commission or conduct studies designed to determine alternative methods of managing and conserving the marine resources of this state in a manner to insure efficiency and sustained productivity;

(d) To issue permits and licenses authorized by law or regulation;

(e) To equip and supply check stations, remote duty stations and personnel for extended duty;

(f) To develop programs to enhance the marketing of the state's recreational and commercial marine resources;

(g) To provide gear, insignias, and otherwise equip personnel subject to the amount appropriated for those purposes; and

(h) To discharge any other duties, responsibilities and powers as are necessary to implement this chapter.

SOURCES: Laws, 1994, ch. 578, § 5; Laws, 1999, ch. 558, § 6, eff from and after passage (approved Apr. 21, 1999.)

§ 49-15-309. Establishment of saltwater recreational fishing record list.

(1) The department is hereby authorized and directed to establish and maintain a saltwater recreational fishing record list of marine fish taken in the state.

(2) The department shall direct fisheries biologists of the department to seek records from fishing rodeos, tournaments or other valid sources of the largest fish of each marine species commonly occurring in the waters of the state.

(3) The department shall declare the initial listing as the official state saltwater records.

(4) The department shall establish criteria for maintaining and updating the official records list.

(5) The department is hereby directed to present all state record holders with a certification of achievement in marine recreational fishing.

SOURCES: Laws, 1994, ch. 578, § 6, eff from and after July 1, 1994.

§ 49-15-311. Authority of department to purchase physical loss and liability coverage insurance.

The department may obtain and pay on coverage for physical loss and liability upon any vehicle or aircraft owned or under control of the department. The department may determine the limits of each insurance policy.

SOURCES: Laws, 1994, ch. 578, § 7, eff from and after July 1, 1994.

§ 49-15-313. Saltwater sports fishing license; separate annual license for charter boat fishing, party boat fishing, head boat and guide boat fishing; proof of random drug testing participation and of liability insurance required; exemptions from licensing requirements; disposition of fees; free fishing weekend; free fishing day.

(1) Any resident between the ages of sixteen (16) and sixty-five (65) years, as defined in Section 49-7-3, fishing in the marine waters of the state, shall obtain a saltwater sports fishing license for a fee of Ten Dollars ($10.00). A resident sixty-five (65) years of age or older, fishing in the marine waters of the state, shall obtain a lifetime saltwater sports fishing license for a one-time fee of Five Dollars ($5.00). These licenses shall be valid in any waters south of Interstate 10. Any resident citizen who is blind, paraplegic or a multiple amputee, or who has been adjudged by the Veterans Administration as having a total service-connected disability, or has been adjudged totally disabled by the Social Security Administration shall not be required to purchase or have in his possession a saltwater sports fishing license while engaged in such activities. Any resident exempt under this section shall have on his person while fishing proof of residency and age or disability. Any resident who is a member of the Armed Forces, including the Reserves and National Guard, and on active duty outside the State of Mississippi is not required to purchase or have in his possession a hunting or fishing license while engaged in such activities on leave from active duty. Such resident shall have in his possession and on his person such proof as may be required by the commission.

(2) The commission shall prescribe the forms, types and fees for nonresident saltwater sports fishing licenses except that the fee for a nonresident saltwater sports fishing license shall not be less than Twenty Dollars ($20.00). This minimum fee shall not apply to nonresidents sixty-five (65) years of age or older. The commission may enter into reciprocal agreements with adjacent states pertaining to fees and exemptions for persons sixty-five (65) years of age or older. The commission shall require a nonresident to purchase a nonresident freshwater fishing license and a nonresident saltwater sports fishing license if the nonresident's state requires both licenses for a nonresident to fish in its marine waters. Any nonresident sixty-five (65) years of age or older shall possess a saltwater sports fishing license.

(3) All resident vessels engaged in charter boat fishing, party boat fishing, head boat and guide boat fishing shall be issued a separate annual license by the commission at a fee of Two Hundred Dollars ($200.00). All nonresident vessels engaged in charter boat fishing, party boat fishing, head boat and guide boat fishing shall be issued a separate annual license by the commission. In addition to other requirements for charter license eligibility, captains must show proof of participation in a Department of Transportation approved random drug testing program and proof of liability insurance as a charter boat captain. Crew members and customers of the licensed vessels shall not be required to purchase an individual resident or nonresident saltwater fishing

license while sponsored by the licensed vessels. An operator of a licensed vessel shall be required to report the number of customers to the department as required by the commission and the information shall be kept confidential and shall not be released, except to other fisheries management agencies or as statistical data. All nonresident vessels engaged in saltwater sport fishing tournaments, not to exceed an aggregate of twenty (20) days per calendar year, shall not be required to purchase an annual license as provided under this subsection.

(4) The saltwater sports fishing license is required for all recreational methods of finfish harvest.

(5) Any resident who purchases a lifetime sportsman's license, in accordance with Section 49-7-153, shall be entitled to fish in the marine salt waters of the state and shall be exempt from the purchase of a sport saltwater fishing license.

(6) Any person authorized to issue a license may collect and retain, for each saltwater fishing license issued, the additional fee authorized under Section 49-7-17.

(7) The fees collected from the sale of resident and nonresident saltwater sports fishing licenses shall be deposited into the Seafood Fund and shall be used solely for the management of marine resources.

(8) Participants in the Very Special Fishing Olympics are exempt from this section.

(9) The first weekend of "National Fishing and Boating Week" in June of each year is designated as "Free Fishing Weekend," and July 4 of each year is designated as "Free Saltwater Sports Fishing Day." Any person may saltwater sport fish without a license on "Free Saltwater Sports Fishing Day" and during "Free Fishing Weekend."

(10) The department may exempt participants in an organized fishing event conducted by a qualified nonprofit charitable, governmental or civic organization from the requirements of this section for one (1) day per year if the organization files an exemption application with the department and the application is approved by the department.

SOURCES: Laws, 1994, ch. 578, § 8; Laws, 1995, ch. 454, § 1; Laws, 1998, ch. 348, § 1; Laws, 2000, ch. 602, § 1; Laws, 2003, ch. 426, § 1; Laws, 2004, ch. 431, § 1; Laws, 2007, ch. 477, § 3; Laws, 2008, ch. 474, § 1; Laws, 2009, ch. 482, § 1; Laws, 2010, ch. 380, § 1; Laws, 2011, ch. 417, § 1, eff from and after passage (approved Mar. 16, 2011.)

Amendment Notes — The 2010 amendment, in (1), added the second sentence, and in the third sentence, substituted "These licenses" for "This license."

The 2011 amendment added "The first weekend of 'National Fishing and Boating Week' in June of each year is designated as 'Free Fishing Weekend' and" at the beginning, "during 'Free Fishing Weekend'" at the end, and made related changes in (9).

Cross References — Deposit of commercial salt water license fees into Seafood Fund, see § 49-15-17.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish Game, and Wildlife Conservation § 47.

§ 49-15-315. Unlawful to engage in commercial harvesting of crabs, oysters, shrimp, bait shrimp or saltwater fish in certain marine waters; exceptions; Gulf Coast Research Laboratory to study estuaries and bays deemed to be nurseries; department to set limits on all catches for noncommercial use; penalties.

(1) It is unlawful for any person, firm or corporation to engage in commercial harvesting of crabs, oysters, shrimp, bait shrimp or saltwater fish in the marine waters north of the CSX bridge in the three (3) coastal counties, except for the following:

(a) A person may take any euryhaline species of minnow; and

(b) A licensed commercial oyster fisherman may harvest oysters from reefs approved by the commission.

(2) The Gulf Coast Research Laboratory shall study all estuaries and bays deemed to be nurseries. The Gulf Coast Research Laboratory may recommend the establishment of nursery grounds in the estuaries and bays if necessary to protect the state's fishing resources.

(3) The department shall set the limits on all catches for noncommercial use.

(4) A person, firm or corporation found guilty of violating this section is guilty of a misdemeanor and shall be fined as provided in Section 49-15-100(2), or imprisoned not more than three (3) months or both; and in addition, the commission shall seize and confiscate all commercial nets, trawls, traps, tongs and boats used for such purpose and dispose of it at public sale and shall deposit the proceeds to the credit of the Seafood Fund. If the person in possession of or using the nets in the violation is not the owner or licensee of the nets, the department shall notify the owner or licensee of the nets. The nets shall be subject to forfeiture unless the nets were stolen and prosecution for the theft is initiated.

SOURCES: Laws, 1994, ch. 578, § 9; Laws, 1997, ch. 379, § 3; Laws, 1997, ch. 601, § 6; Laws, 2011, ch. 326, § 1; Laws, 2012, ch. 328, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 3 of ch. 379, Laws of 1997, amended this section, effective July 1, 1997 (approved March 18, 1997). Section 6 of ch. 601, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 6 of ch. 601, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2011 amendment substituted "marine waters north of the CSX bridge in the three (3) coastal counties" for "Pascagoula River System north of the CSX Railroad in Jackson County" in (1).

The 2012 amendment added (1)(b); deleted former (1)(b) and (2) which read: "(b) A person may take live bait shrimp between the hours of sunrise and sunset on Friday, Saturday and Sunday in the West Pascagoula River System when opened by the department after sampling studies" and "(2) A person may take live bait shrimp between the hours of sunrise and 12:00 noon in the Back Bay of Biloxi when opened by the department after sampling studies" and redesignated the remaining subdivisions accordingly.

Cross References — Seafood Fund, see § 49-15-17.

§ 49-15-317. Certain charter or recreational fishing boats authorized to fillet certain fish at sea.

Any charter or recreational fishing boat in the Gulf of Mexico over twenty-four (24) hours before returning to land may fillet any fish caught by its charter or recreational fishermen. The commission shall not adopt any rule or ordinance prohibiting or unduly restricting the filleting of fish by such charter or recreational fishing boats.

SOURCES: Laws, 1994, ch. 578, § 10, eff from and after July 1, 1994.

§ 49-15-319. Filing float plan; effect of failure to file.

(1) Any charter or recreational fishing boat which will be in the Gulf of Mexico over twenty-four (24) hours shall file a float plan with the department prior to departure.

(2) If a float plan is not filed, the fish on such boat shall not be filleted.

SOURCES: Laws, 1994, ch. 578, § 11, eff from and after July 1, 1994.

§ 49-15-321. Commission authorized to establish sanctuaries and nursery grounds; unlawful to engage in prohibited activity in designated sanctuary or nursery area.

The commission is hereby authorized to establish sanctuaries to protect the state's fishing resources. The establishment of a sanctuary shall be based on overall public interest and prudent fisheries management and research. The commission shall establish nursery grounds in the estuaries and bays sufficient to protect the state's fishing resources.

It shall be unlawful to engage in any activity prohibited by the commission in a designated sanctuary or nursery area.

SOURCES: Laws, 1994, ch. 578, § 12, eff from and after July 1, 1994.

§ 49-15-323. Commission to have jurisdiction over certain violations of marine resources law or regulations committed in the Gulf of Mexico outside state's territorial waters.

If any violation of any marine resources law or regulation is alleged to have been committed in the Gulf of Mexico outside of the state's territorial waters where the state has jurisdiction over the recreational or commercial fishing vessel, under the Magnuson-Stevens Fishery Conservation and Management Act, 16 USCS Section 1856, or any other provision of federal law, the Commission on Marine Resources shall have jurisdiction of the offense and may commence administrative enforcement action against alleged violators in accordance with the administrative procedures provisions of M.C.A. Section 49-15-401, et seq.

SOURCES: Laws, 2008, ch. 372, § 1, eff from and after July 1, 2008.

Editor's Note — Laws of 2008, ch. 372, § 2, provides:

"SECTION 2. Section 1 of this act shall be codified as a new section in Chapter 15, Title 49, Mississippi Code of 1972."

ARTICLE 7.

ADMINISTRATIVE HEARING PROCEDURE FOR COMMISSION ON MARINE RESOURCES.

SEC.

49-15-401. Purpose; commission not to seek both administrative and criminal penalties except under limited circumstances; commission to notify Department of Marine Resources of violations for administrative penalty processing.
49-15-403. Complaint; executive director of department to review each complaint for reasonable grounds to indicate violation; director may recommend fine where reasonable grounds exist; violator may request informal settlement conference; request for hearing before commission.
49-15-405. Hearing to be scheduled upon request of alleged violator; transcript of hearing; commission empowered to require attendance of witnesses, administer oaths, and hear testimony; subpoena power; majority vote of commission required to issue written opinion and assess penalty.
49-15-407. Waiver of right to hearing.
49-15-409. Jurisdiction; rules and regulations.
49-15-411. Judicial review.
49-15-413. Civil penalties for violations.
49-15-415. Payment of penalties; sums collected paid into Seafood Fund.
49-15-417. Criminal immunity for witnesses subpoenaed by commission.

§ 49-15-401. Purpose; commission not to seek both administrative and criminal penalties except under limited circumstances; commission to notify Department of Marine Resources of violations for administrative penalty processing.

It is the purpose of this article to establish an administrative hearing procedure for the Commission on Marine Resources to enforce the rules and regulations of the commission and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, and such other statutes within the jurisdiction of the Commission on Marine Resources. Unless specifically authorized, the commission shall not seek both administrative and criminal penalties against violators of the statutes referred to herein for the same offense, except as provided in Section 49-15-63. The commission will notify the Department of Marine Resources of violations to bring forward for administrative penalty processing.

SOURCES: Laws, 2005, ch. 422, § 1, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-403. Complaint; executive director of department to review each complaint for reasonable grounds to indicate violation; director may recommend fine where reasonable grounds exist; violator may request informal settlement conference; request for hearing before commission.

(1) When any allegation or charge in the form of a complaint has been made against a person for violating the rules and regulations of the commission and such matter has been brought before the commission for administrative penalty processing, the commission shall:

(a) Cause the complaint to be in writing and signed by the person making the charge;

(b) Insure that the complaint is filed in the office of the commission;

(c) Cause the complaint to be reviewed by the executive director of the department, or his designee; and

(d) Send or deliver a copy of the complaint and any supporting documents to the alleged violator along with a request for the alleged violator to respond to the allegations within thirty (30) days. The notification shall be accomplished by any of the methods provided for by the Mississippi Rules of Civil Procedure. Citations issued at the time of the alleged violation by marine enforcement officers shall constitute sufficient notice.

(2) Upon receipt of the response and any supporting documents from the alleged violator, the executive director, or his designee, shall review all information on file to determine the merit of the complaint. If the executive director, or his designee, determines that the complaint lacks merit, the executive director may recommend that the complaint be dismissed.

(3) If the executive director, or his designee, determines that there are reasonable grounds to indicate that a violation has occurred or if the alleged violator admits to the truth of the allegations upon which the complaint is based, the executive director may recommend to the commission a fine not to exceed Ten Thousand Dollars ($10,000.00) for each violation. The executive director shall send a copy of the recommendation to the alleged violator and the commission.

(4)(a) The alleged violator shall have fifteen (15) days from receipt of the recommendation of the executive director within which to file with the commission a written request for an informal settlement conference with the executive director, or his designee. If the alleged violator requests a conference, the executive director, or his designee, shall meet with the alleged violator to discuss the proposed penalty and the possibility of an agreed settlement. If, in the judgment of the executive director, or his designee, a reasonable settlement is reached, the recommended penalty shall be revised accordingly.

(b) If the alleged violator and the executive director, or his designee, fail to reach an agreement on the recommended penalty, or if the alleged violator does not file a written request for a settlement conference, the alleged violator shall file within twenty (20) days of receipt of the recommendation of the executive director a written request for a hearing before the commission.

(5) The commission shall consider the alleged violation and the recommendation of the department at a regularly scheduled meeting of the commission. In determining the amount of the penalty, the commission may consider the appropriateness of such penalty and the gravity of the violation. The commission may issue a warning in lieu of proposing a penalty.

SOURCES: Laws, 2005, ch. 422, § 2, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-405. Hearing to be scheduled upon request of alleged violator; transcript of hearing; commission empowered to require attendance of witnesses, administer oaths, and hear testimony; subpoena power; majority vote of commission required to issue written opinion and assess penalty.

(1) The commission shall, within forty (40) days of notification from the alleged violator that a hearing is requested, schedule a hearing at a date, time and place to be determined by the commission. For good cause shown the commission may grant a continuance or continuances of such hearings. Written notice of the date, time and place of such hearing shall be mailed to the alleged violator by registered mail, return receipt requested, no less than fifteen (15) days before the time of the hearing.

(2) In lieu of a hearing before the full commission, the commission may designate one or more members of the commission or a representative of the Attorney General's office to preside over the hearing and render a finding and recommendation for the full commission.

(3) A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the alleged violator requests a public hearing. The commission shall

have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to ensure an orderly, expeditious and impartial proceedings, and shall admit all relevant and material evidence except evidence which is unduly repetitious. Hearsay shall be admissible to the extent permitted by the commission.

(4) For purposes of such hearing, the commission is hereby empowered to require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the alleged violator. The commission shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing. Subpoenas to be issued shall be delivered to the sheriff of the county where they are to be executed and the sheriff shall serve them. In case of the failure of any person to comply with any subpoena issued by the commission, the commission or its authorized representative may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt thereof.

(5) At the conclusion of the hearing, the commission, upon the majority vote of the members present, shall issue a written opinion incorporating its findings of facts and conclusions of law and any penalty that it may assess not to exceed Ten Thousand Dollars ($10,000.00) per violation. The executive officer shall notify the alleged violator of the commission's decision.

SOURCES: Laws, 2005, ch. 422, § 3, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:

"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-407. Waiver of right to hearing.

Failure of the alleged violator to request an informal settlement conference or a hearing or to respond to the complaint within thirty (30) days shall constitute a waiver of the right to a hearing, and any penalties assessed by the commission shall be due and payable as provided in Section 49-15-415.

SOURCES: Laws, 2005, ch. 422, § 4, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:

"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-409. Jurisdiction; rules and regulations.

The commission shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of this article and the rules and regulations of the commission. The commission may adopt rules and regulations to implement the provisions of this article.

SOURCES: Laws, 2005, ch. 422, § 5, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-411. Judicial review.

(1) Any individual aggrieved by a final decision of the commission shall be entitled to judicial review.

(2) Any appeal from the commission's decision shall be filed in the Chancery Court of the Second Judicial District of Harrison County, Mississippi, on the record made, including a verbatim transcript of the testimony at the hearing held before the commission. The appeal shall be filed within thirty (30) days after notification of the decision of the commission is mailed or served, and the proceedings in chancery court shall be conducted as other matters coming before the court on appeal. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all estimated costs, including the cost of preparation of the record of the proceedings before the commission, and the filing of a bond in the sum of Five Hundred Dollars ($500.00) conditioned that if the action of the commission be affirmed by the chancery court, the aggrieved party shall pay the costs of the appeal to the chancery court.

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the commission to determine if the action of the commission is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the commission in complying with the procedural requirements of this article. If there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the chancery court may appeal to the State Supreme Court in the manner provided by law.

SOURCES: Laws, 2005, ch. 422, § 6, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-413. Civil penalties for violations.

Each violation of the rules and regulations of the commission or violations of the statutes set forth in Chapters 15 and 27 of Title 49, and Chapter 21 of

Title 59, Mississippi Code of 1972, shall be subject to the imposition of a civil penalty up to Ten Thousand Dollars ($10,000.00).

SOURCES: Laws, 2005, ch. 422, § 7, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-415. Payment of penalties; sums collected paid into Seafood Fund.

(1) Any penalty assessed by the commission shall be due and payable within forty-five (45) days of the notification of the decision. All sums of money collected as a result of criminal or civil penalties levied under this article shall be paid into the Seafood Fund created and described in Section 49-15-17.

(2) If the judgment is not paid within the forty-five (45) days, or within such additional time as the commission may allow, the commission may file suit in the chancery court of the county where the defendant resides or in the case of a nonresident defendant in the Chancery Court of the Second Judicial District of Harrison County or any other court with appropriate jurisdiction to enforce the decision of the commission and recover reasonable attorney's fees and all court costs.

(3) A copy of the notification sent by the commission to the violator shall be sufficient proof as to the judgment of the commission.

SOURCES: Laws, 2005, ch. 422, § 8, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

§ 49-15-417. Criminal immunity for witnesses subpoenaed by commission.

No person shall be subject to criminal prosecution or to any penalty or forfeiture in a separate proceeding for or on account of any transaction, matter or issue concerning which he may be required to testify to or produce evidence, or provide documentation, before the commission or at any of its hearings or conferences, or in compliance with any subpoena; however, no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SOURCES: Laws, 2005, ch. 422, § 9, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 422, § 10, provides:
"SECTION 10. The provisions of Sections 1 through 9 shall be codified as a separate article in Chapter 15, Title 49, Mississippi Code of 1972."

CHAPTER 17

Pollution of Waters, Streams, and Air

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IN GENERAL

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49-17-44.1. Petition for appointment of receiver to operate and manage abandoned or grossly mismanaged sewer systems.
49-17-45. Small Business Stationary Source Technical and Environmental Compliance Assistance program; Small Business Compliance Advisory Panel.

§ 49-17-1. Short title.

Sections 49-17-1 through 49-17-43 may be cited as the "Mississippi Air and Water Pollution Control Law."

SOURCES: Codes, 1942, § 7106-135; Laws, 1966, ch. 258, § 25, eff from and after July 1, 1966.

Cross References — Provision for income tax deduction with respect to the amortization of any certified pollution or environmental control facility, see § 27-7-17.

Penalties, reprimands, suspensions and revocation of certificates, see § 37-138-27.

Safe Drinking Water Law, see §§ 41-26-1 et seq.

Proceedings before commission for violation of any provisions of §§ 49-17-1 through 49-17-43, see § 49-17-31.

Submission of plans, specifications and other information to permit board to carry out provisions of §§ 49-17-1 through 49-17-43 rules and regulations adopted pursuant to such sections, see § 49-17-29.

Assessment of a penalty which will further the purposes of §§ 49-17-1 et seq., upon the failure of a person to appear at a hearing before the Mississippi Commission on Environmental Quality, see § 49-17-33.

Protection of other information obtained by the commission, department or permit board in the administration of §§ 49-17-1 through 49-17-43, see § 49-17-39.

Penalties for violation of provisions of §§ 49-17-1 through 49-17-43 or any rule or regulation or written order of commission, see § 49-17-43.

Compliance with Air and Water Pollution Control Law as purpose of Waveland Regional Wastewater Management Act, see § 49-17-163.

Compliance with the Air and Water Pollution Control Law as purpose of Mississippi Gulf Coast Regional Wastewater Authority Act, see § 49-17-303.

Application of §§ 49-17-1 through 49-17-43 to the levy and assessment of penalties for a violation of the underground storage tank act, see § 49-17-427.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, see §§ 49-35-1 et seq.

Water Resources Research Institute, see § 57-55-7.

JUDICIAL DECISIONS

1. In general.

United States Bankruptcy Court for the Northern District of Mississippi held in abeyance its final decision on defendants, hog farms', motion for summary judgment pending briefing by the parties because it was unclear whether under the Mississippi Air and Water Pollution Control law, codified in Miss. Code Ann. § 47-17-1 et seq., if plaintiffs could maintain a private cause of action of nuisance, if so, their action was not time barred under Miss. Code Ann. § 95-3-29. Norman v. Prestage Farms, Inc. (In re Moore), — Bankr. —, 2004 Bankr. LEXIS 294 (Bankr. N.D. Miss. Mar. 2, 2004).

United States Bankruptcy Court for the Northern District of Mississippi held in abeyance its final decision on defendants Prestage Farms', motion for summary judgment pending briefing by the parties because it was unclear whether, under the Mississippi Air and Water Pollution Control Law, codified in Miss. Code Ann. § 49-17-1, et seq., plaintiffs could maintain a private cause of action of nuisance; if they could, the action was not time barred under Miss. Code Ann. § 95-3-29. Moore v. Prestage Farms, Inc. (In re Moore), 306 B.R. 849 (Bankr. N.D. Miss. 2004).

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

The enactment of the Air and Water Pollution Act tolled any prescriptive rights to emit pollutants into the air. Vicksburg Chem. Co. v. Thornell, 355 So. 2d 299 (Miss. 1978).

Bankruptcy court found that no private right of action nor remedy existed under the Mississippi Air and Water Pollution Control Law, codified in Miss. Code Ann. § 49-17-1 through § 49-17-43; while the Mississippi Air and Water Pollution Control Law did allow for private party participation, it clearly did not provide a private right of action or a private remedy for those persons adversely affected by air or water pollution. Norman v. Prestage Farms, Inc. (In re Moore), 310 B.R. 795 (Bankr. N.D. Miss. 2004).

RESEARCH REFERENCES

ALR. Maintainability in state court of class action for relief against air and water pollution. 47 A.L.R.3d 769.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving defense, military, and related projects. 75 A.L.R. Fed. 119.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving park, recreational, wilderness, and related projects. 75 A.L.R. Fed. 738.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving projects relating to acquisition, construction, alteration, or disposition of government facilities. 76 A.L.R. Fed. 279.

What constitutes impairment of proposed intervenor's interest so as to support intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure in environmental actions. 76 A.L.R. Fed. 762.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(a)(C)) in cases involving regulation of private enterprise. 76 A.L.R. Fed. 902.

Conformity requirements of § 176(c) of Clean Air Act, 42 U.S.C.S. § 7506(c). 157 A.L.R. Fed. 217.

Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)(33 U.S.C.S. §§ 1251 et seq.) — Supreme Court cases. 163 A.L.R. Fed. 531.

Am Jur. 61B Am. Jur. 2d, Pollution Control § 147.

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Forms 1 et seq. (air pollution); 11 et seq. (water pollution and sewage disposal); 31 et seq. (multiple environmental threats from single source).

CJS. 93 C.J.S., Waters §§ 93-97.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

Anderson, Philips, Kissleff, Liability insurance coverage for pollution claims. 59 Miss. L. J. 699, Winter, 1989.

Milner & Waggoner, Overview of Major Federal Environmental Acts and Regulations for the General Practitioner. 60 Miss. L. J. 1, Spring, 1990.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

Three Years After SWANCC: Still Wading Through the Jurisdictional Gap Created by the United States Supreme Court, 23 Miss. C. L. Rev. 75, Fall, 2003.

§ 49-17-3. Statement of policy.

Whereas, the pollution of the air and waters of the state constitutes a menace to public health and welfare, creates a public nuisance, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of air and water, and whereas, the problem of air and water pollution in this state is closely related to the problem of air and water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the air and waters of the state and to protect, maintain and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to maintain such a reasonable degree of quality of the air resources of the state to protect the health, general welfare and physical property of the people, and to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing air or water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.

SOURCES: Codes, 1942, § 7106-111; Laws, 1966, ch. 258, § 1, eff from and after July 1, 1966.

Cross References — Required preparation and implementation of coastal area plan by marine resources council that would further public policy expressed by this section, see § 57-15-6.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

A lessee operator of a holding pond for creosote runoff was required to close the hazardous waste unit since he had not obtained a permit where creosote compounds were present in the pond and there was a potential for pollution even though there had been no contamination. Penick v. Mississippi Comm'n on Natural Resources, 533 So. 2d 179 (Miss. 1988).

In suit by landowner against timber company seeking to enjoin company from polluting landowner's lake and for damages as result of pollution, finding that company has introduced sublethal level of pentachlorophenol (PCP) is not sufficient to require restoration of lake to previous unpolluted state but does entitle landowner to injunction enjoining and prohibiting further PCP pollution into lake by company. Phillips v. Davis Timber Co., 468 So. 2d 72 (Miss. 1985).

RESEARCH REFERENCES

ALR. Validity of state and local air pollution administrative rules. 74 A.L.R.4th 566.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-5. Definitions.

For the purposes of Sections 49-17-1 through 49-17-43, the following words and phrases shall have the meanings ascribed to them in this section:

(1) Water.

(a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board.

(b) "Wastes" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(c) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(d) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems.

(f) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251 et seq).

(g) "Underground water" means an underground source of drinking water as defined within the regulations of the Federal Safe Drinking Water Act.

(2) Air.

(a) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, produced by processes other than natural.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.

(c) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(d) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(e) "Air-cleaning device" means any method, process or equipment, the primary function of which is to remove, reduce or render less noxious air contaminants discharged into the atmosphere.

(f) "Area of the state" means any city or county or portion thereof, or other substantial geographical area of the state as may be designated by the Mississippi Commission on Environmental Quality.

(g) "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended.

(3) General.

(a) "Commission" means the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality.

(b) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.

(c) "Pollution Emergency Fund" means the fund established under Section 49-17-68.

(d) "General permit" means a permit for categories of sources that involve similar wastes and have similar monitoring requirements and restrictions.

SOURCES: Codes, 1942, § 7106-112; Laws, 1966, ch. 258, § 2; Laws, 1972, ch. 505, § 1; Laws, 1978, ch. 484, § 54; Laws, 1981, ch. 528, § 12; Laws, 1987, ch. 523, § 1; Laws, 1988, ch. 311, § 3; Laws, 1991, ch. 561, § 2, eff from and after July 1, 1991.

Editor's Note — Section 7, ch. 523, Laws of 1987, effective from and after July 1, 1987, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Federal Aspects — Federal Clean Water Act (also known as the Federal Water Pollution Control Act), see 33 USCS §§ 1251 et seq.

Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

Federal Clean Air Act, see 42 USCS §§ 7401 et seq.

RESEARCH REFERENCES

ALR. What constitutes "point source" of pollution subject to control by provisions of Water Pollution Control Act, as amended (33 USCS § 1362(14). 52 A.L.R. Fed. 885.

What are "navigable waters" subject to Federal Water Pollution Control Act (33 U.S.C.S. §§ 1251 et seq.). 160 A.L.R. Fed. 585.

§ 49-17-7. Transfer of duties and responsibilities of Mississippi Air and Water Pollution Control Commission.

(1) The Mississippi Commission on Environmental Quality shall be the Mississippi Air and Water Pollution Control Commission, and shall exercise

the duties and responsibilities of the Mississippi Air and Water Pollution Control Commission through the Mississippi Department of Environmental Quality.

(2) The words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Environmental Quality.

SOURCES: Codes, 1942, § 7106-113; Laws, 1966, ch. 258, § 3; Laws, 1972, ch. 369, § 14; ch. 505, § 2; Laws, 1973, ch. 406, § 1; Laws, 1977, ch. 327, § 1; Laws, 1978, ch. 484, § 53; Laws, 1999, ch. 573, § 3, eff from and after July 1, 1999.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Mississippi Air and Water Pollution Control Commission, requirement to certify pollution or environmental control facilities with respect to business amortization deductions, see § 27-7-17.

Reports pertaining to waters containing radioactive materials, see § 45-14-39.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

RESEARCH REFERENCES

ALR. Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Am Jur. 61B Am. Jur. 2d, Pollution Control § 147.

CJS. 93 C.J.S., Waters §§ 93-97.

§§ 49-17-9 and 49-17-11. Repealed.

Repealed by Laws of 1978, ch. 484, § 57, eff from and after July 1, 1979.

§ 49-17-9. [Codes, 1942, § 7106-132; Laws, 1966, ch. 258, § 22]

§ 49-17-11. [Codes, 1942, § 7106-114; Laws, 1966, ch. 258, § 4; Am Laws, 1972, ch. 505, § 3]

Editor's Note — Former § 49-17-9 provided for a seal for the State Air and Water Pollution Control Commission.

Former § 49-17-11 related to meetings of the Air and Water Pollution Control Commission.

§ 49-17-13. Commission designated as pollution control agency for state; assistance from other state agencies.

(1) The commission is hereby designated as the pollution control agency for this state to administer federal pollution control legislation and programs and interstate or regional agreements pertaining to solid or hazardous waste management.

(2) The commission shall have the right to call upon and receive the assistance of any officer, board, department, school, university or any other state agency, and officers and employees thereof, for any reasonable assistance necessary or beneficial in carrying out the provisions of Sections 49-17-1 through 49-17-43.

SOURCES: Codes, 1942, § 7106-115; Laws, 1966, ch. 258, § 5; Laws, 1971, ch. 456, § 1; Laws, 1972, ch. 505, § 4 1978, ch. 484, § 55; Laws, 1982, ch. 411, § 7; Laws, 1984, ch. 488, § 235; Laws, 1989, ch. 552, § 1; Laws, 1999, ch. 573, § 2, eff from and after July 1, 1999.

Cross References — Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Requirement that Soil and Water Commission enter into memorandum of understanding with the Commission on Environmental Quality regarding its role in nonpoint source pollution issues, see § 69-27-13.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies (§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss. Const. Art. 1, § 2 and are unconstitutional. Alexander v. State ex rel. Allain, 441 So. 2d 1329 (Miss. 1983).

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675.

§ 49-17-14. Title V air operating permit program; program fee trust fund; expenditures for authorized purposes.

(1) "Title V program" means, as used in Sections 49-17-1 through 49-17-45, the air operating permit program mandated in Title V of the 1990 amendments to the federal Clean Air Act, codified in 42 U.S.C.S. Section 7661, et seq.

(2) There is created in the State Treasury a fund to be designated as the "Air Operating Permit Program Fee Trust Fund," referred to hereinafter as the "fund."

(3) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations and judicial actions.

(5) To facilitate the proper administration of the fund, the commission is authorized to promulgate rules and regulations for the administration of the fund.

(6) The commission shall expend or utilize monies in the fund by an annual appropriation approved by the Legislature to pay all reasonable direct and indirect costs associated with the development and administration of the Title V program including, but not limited to, the reasonable costs of the following activities as they relate to the Title V program:

(a) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(b) Reviewing and acting on any application for a permit, permit modification or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit modification or renewal;

(c) Administering the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(d) Implementing and enforcing the terms of any Title V permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(e) Emissions and ambient monitoring;

(f) Modeling, analyses, or demonstrations;

(g) Preparing inventories and tracking emissions;

(h) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program under Section 507 of the federal Clean Air Act in determining and meeting their obligations under this section; and

(i) Providing funding to the Advisory Council created in Section 49-17-16 in an amount reasonably sufficient to meet the Advisory Council's obligations under Sections 49-17-1 through 49-17-45.

(7) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year. If the annual fees collected exceed the cost of administering the Title V program for that fiscal year, then the excess shall be applied to the cost of administering the program for the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately.

(8) No such fees shall be utilized by the Department of Environmental Quality or any other person for any purpose or purposes other than those purposes required by Sections 49-17-1 through 49-17-45.

SOURCES: Laws, 1993, ch. 611, § 1, eff from and after passage (approved April 16, 1993).

Cross References — Study of costs for developing Title V program, see § 49-17-16.

Commission on Natural Resources to establish amounts of fees to cover costs of Title V program, and to deposit fees into Air Operating Permit Program Fee Trust Fund, see § 49-17-30.

§ 49-17-15. Repealed.

Repealed by Laws of 1978, ch. 484, § 57, eff from and after July 1, 1979.

[Am Laws, 1972, ch. 505, § 17; Codes, 1942, § 7106-131; Laws, 1966, ch. 258, § 21]

Editor's Note — Former § 49-17-15 related to the oath and bond of the executive secretary of the Air and Water Pollution Control Commission.

§ 49-17-16. Advisory Council.

(1)(a) An Advisory Council, hereinafter referred to as "Advisory Council," is created to conduct an independent study of the costs for the development and administration of the Title V program within the Department of Environmental Quality and to conduct an annual review of the costs of administering such programs.

(b) The costs to be included within the study for the Title V program shall be those costs set forth in Section 49-17-14. The Advisory Council shall include within the study the type and quantity of actual and allowable emissions within the state that are covered by the Title V program. After completing a study of the program needs and costs the Advisory Council shall recommend an equitable fee system for the Title V program that is based on the type and quantity of emissions. The annual review for the air operating permit program shall determine if the fee system is collecting sufficient funds to meet Title V program needs. Each annual review report shall be due January 1 of each succeeding year to the commission and the Executive Director of the Department of Environmental Quality.

(2) The Advisory Council shall submit recommendations to the Department of Environmental Quality concerning the costs of the development, implementation and administration of the State Air Operating Permit Implementation Plan in advance of the state's submittal to the Environmental Protection Agency which is due by November 1993. The Department of Environmental Quality shall assist the Advisory Council by providing any information the Advisory Council may require to perform its duties under Sections 49-17-1 through 49-17-45.

(3) The Advisory Council shall be composed of the following seven (7) persons appointed as follows: three (3) representatives of permitted industries that qualify for inclusion under the Title V program, that are required to pay the permit fee and that are also permittees under the National Pollution Discharge Elimination System (NPDES) permit program of the Clean Water Act, with one (1) such representative to be appointed by the Governor, one (1) by the Lieutenant Governor and one (1) by the Speaker of the House of Representatives; the Executive Director of the Department of Economic and Community Development; the President of the Mississippi Manufacturers Association; the President of the Mississippi Farm Bureau Federation; and the Chairman of the Mississippi Small Business Compliance Advisory Panel. Nonappointed members of the Advisory Council may designate an alternate member to act in their stead in performing any function of the Advisory Council.

The initial terms of appointment of the members of the Advisory Council shall be as follows: the representatives of the permitted industries appointed by the Lieutenant Governor and the Speaker of the House of Representatives shall serve a term of one (1) year; the representative of the permitted industry appointed by the Governor and the Chairman of the Mississippi Small Business Compliance Advisory Panel shall serve a term of two (2) years; the Executive Director of the Department of Economic and Community Development and the President of the Mississippi Farm Bureau Federation, or their designees, shall serve a term of three (3) years; and the President of the Mississippi Manufacturers Association, or his designee, shall serve a term of four (4) years. Thereafter, the length of the term for each member of the Advisory Council shall be four (4) years.

(4) Original appointments to the Advisory Council shall be made no later than June 1, 1993. Vacancies on the Advisory Council shall be filled by appointment in the same manner as the original appointments. The Advisory Council shall convene within sixty (60) days following the date of the appointment of the members.

(5) The Advisory Council shall select from their membership a chairperson to preside over meetings and a vice-chairperson to preside in the absence of the chairperson or when the chairperson shall be excused. The Advisory

Council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) Members of the Advisory Council shall serve without salary. The members of the Advisory Council shall be entitled to receive reimbursement of their actual travel and hotel expenses as provided in Section 25-3-41, incurred while in the performance of their duties as members of the Advisory Council to be paid on an itemized statement approved by the State Fiscal Officer. Expenses shall be paid from fees collected in accordance with Section 49-17-30.

(7) The Executive Director of the Department of Environmental Quality shall provide technical, clerical and other support services, including services by contract, as the Advisory Council determines that it requires in the performance of its functions.

SOURCES: Laws, 1993, ch. 611, § 2, eff from and after passage (approved April 16, 1993).

Cross References — Title V program defined, see § 49-17-14.
Commission on Natural Resources to fund Advisory Council, see § 49-17-14.

ATTORNEY GENERAL OPINIONS

The provisions of Section 49-17-16(4), pertaining to acting as a lobbyist, are not applicable to the four "nonappointed" members of the Advisory Council. Chisholm, Aug. 8, 2003, A.G. Op. 03-0403.

§ 49-17-17. Powers and duties.

The commission shall have and may exercise the following powers and duties:

(a) General supervision of the administration and enforcement of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and all rules and regulations and orders promulgated thereunder;

(b) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air and waters of the state;

(c) To advise, consult, cooperate, or enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, other states and interstate agencies, or any public or private institution located inside or outside the State of Mississippi, and with affected groups, political subdivisions, and industries in furtherance of carrying out the provisions of Sections 49-17-1 through 49-17-43 and shall have the authority to enter into compacts with any other state or states for the purpose of achieving the objectives of such sections with respect to air and waters, or to authorize the executive director with the approval of the commission to exercise any of the aforementioned powers;

(d) To administer funds allocated to the state's water and air pollution abatement grant program, to accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(e) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water quality and pollution and causes, prevention, control and abatement as it may deem advisable and necessary for the discharge of its duties under Sections 49-17-1 through 49-17-43; to make funds available from the water pollution abatement grant fund by means of advances to political subdivisions in this state in an amount not to exceed one percent (1%) of the estimated project cost as approved by and under such rules and regulations as adopted by the commission for the preparation of project planning reports and feasibility analyses; and to exercise such supervision as it may deem advisable and necessary for the discharge of its duties under Sections 49-17-1 through 49-17-43;

(f) To require the repayment of funds made available to a political subdivision under subsection (e) above to the water pollution abatement grant fund prior to the receipt of any other funds by any political subdivision providing services to the area and receiving funds provided under Sections 49-17-1 through 49-17-43; any funds made available to any political subdivisions providing services to the area and receiving funds under the provisions of said sections shall be repaid in the same manner as are other funds made available to the political subdivisions under the provisions of said sections;

(g) To collect and disseminate information relating to air and water quality and pollution and the prevention, control, supervision and abatement thereof;

(h) To adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the state under such conditions as the commission may prescribe for the prevention, control and abatement of pollution;

(i) To adopt, modify, repeal, and promulgate, after due notice and hearing, and, where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and as the commission may deem necessary to prevent, control and abate existing or potential pollution;

(j) To issue, modify, or revoke orders (1) prohibiting, controlling or abating discharges of contaminants and wastes into the air and waters of the state; (2) requiring the construction of new disposal systems, or air-cleaning devices, or any parts thereof or the modification, extension or alteration of existing disposal systems, or air-cleaning devices, or any parts thereof, or the adoption of other remedial measures to prevent, control or abate air and water pollution; and (3) setting standards of air or water quality or evidencing any other determination by the commission under Sections 49-17-1 through 49-17-43;

(k) To hold such hearings, to issue notices of hearing and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer oaths, and to take such testimony as the commission deems necessary;

(*l*) To require the prior submission of plans, specifications and other data relative to, and to inspect the construction of, disposal systems, or air-cleaning devices, or any part thereof, in connection with the issuance of such permits or approval as are required by Sections 49-17-1 through 49-17-43;

(m) To require proper maintenance and operation of disposal systems, or air-cleaning devices; and to require the installation and operation of monitoring devices or methods as may be deemed necessary and the maintenance and submission of monitoring and operating records as may be prescribed;

(n) To exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47; and

(o) To delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution. In cases of difference of opinion between such agencies as to their respective field of operation, the commission shall delegate said responsibility to the proper agency, and the commission's action therein shall be final.

Nothing contained in this section shall be deemed to grant to the commission any jurisdiction or authority to make any rule or regulation, recommendation or determination or to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops or to affect the relations between employers and employees with respect to or arising out of any air condition.

SOURCES: Codes, 1942, § 7106-116; Laws, 1966, ch. 258, § 6; Laws, 1971, ch. 456, § 2; Laws, 1972, ch. 505, § 5; Laws, 1977, ch. 327, § 2; Laws, 1981, ch. 528, § 13; Laws, 1982, ch. 411, § 8, eff from and after passage (approved March 25, 1982).

Cross References — Reports pertaining to waters containing radioactive materials, see § 45-14-39.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Injunctive relief in cases of imminent and substantial hazard or endangerment, see § 49-17-43.

Disbursement of loans made under water pollution abatement grant program, see § 49-17-63.

Application of this section to the levy and assessment of penalties for a violation of the underground storage tank act, see § 49-17-427.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Surface mining and reclamation of land, see §§ 53-7-1 et seq.

State chemical laboratory, see § 57-21-9.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

Where an operator of a poultry processing plant maintained a waste system preventing discharge into state waters but seepage and intermittent overflow into a natural dry creek bed occurred, particularly after a rainfall of disaster proportions, the commission had the authority to indulge the operator with a tolerance permit for such time as was reasonably necessary to either treat the waste water in the manner required or to remedy the situation where rainfall caused temporary discharge of waste water; and the commission should have done so, despite the fact that the operator was a new industry and the commission could not ordinarily issue a tolerance permit to a new plant since it had not been previously polluting state waters. MFC Servs. (AAL) Corp. v. Mississippi Air & Water Pollution Control Comm'n, 293 So. 2d 16 (Miss. 1974).

ATTORNEY GENERAL OPINIONS

A determination by the Mississippi Department of Environmental Quality as to the appropriate sewage facility supercedes a more permissive decision made on the same issue by a county board of supervisors. Chamberlin, Jan. 23, 2004, A.G. Op. 03-0540.

RESEARCH REFERENCES

ALR. Validity of state and local air pollution administrative rules. 74 A.L.R.4th 566.

Construction and application of §§ 101-105 of National Environmental Policy Act of 1969 (42 USCS §§ 4331-4335) requiring all federal agencies to consider environmental factors in their planning and decision making. 17 A.L.R. Fed. 33.

Citizen's action against Administrator of Environmental Protection Agency to compel performance of nondiscretionary duty under § 505(a)(2) of Federal Water Pollution Control Act Amendments of 1972 (33 USCS § 1365(a)(2)). 57 A.L.R. Fed. 851.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5, 147.

61B Am. Jur. 2d, Pollution Control § 676.

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Forms 1 et seq. (air pollution); 11 et seq. (water pollution and sewage disposal); 31 et seq. (multiple environmental threats from single source).

CJS. 93 C.J.S., Waters §§ 93-97.

Law Reviews. 1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 49-17-19. Standards of air and water quality.

In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may set ambient standards of air and water quality for the state or portions thereof. Such ambient standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such air and of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses. Such ambient standards may be amended from time to time as determined to be necessary by the commission. In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may also set emission standards for the purpose of controlling air contamination, air pollution and the sources thereof. In establishing ambient air quality standards for odor, the commission shall adopt recognized objective standards if they exist. In the absence of a recognized objective ambient air quality standard for odor, the commission may adopt such subjective standards as may be appropriate.

In establishing such standards relating to pesticides and commercial fertilizers for underground water, the commission shall adopt federal standards if they exist. If no federal standard exists, the commission shall petition the U.S. Environmental Protection Agency to establish a federal standard for the substance of interest. If the commission determines that a federal standard cannot be obtained within thirty (30) days, it shall consult with the U.S. Environmental Protection Agency's Office of Drinking Water and Office of Pesticide Programs regarding the agency's conclusion relative to available toxicological information on the substance of interest and on the methodology used for establishing a federal standard. The commission shall utilize this information and methodology to establish a standard. The commission may also consult with and request similar information from other sources.

SOURCES: Codes, 1942, § 7106-119; Laws, 1966, ch. 258, § 9; Laws, 1972, ch. 505, § 7; Laws, 1982, ch. 411, § 9; Laws, 1987, ch. 523, § 2; Laws, 1991, ch. 333 § 1, eff from and after passage (approved March 15, 1991).

Cross References — Disposition and use of funds collected from violations of Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Reports pertaining to waters containing radioactive materials, see § 45-14-39.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Federal Aspects — Collection and dissemination of scientific knowledge on effects and control of pesticides in water, see 33 USCS § 1254(1).

Federally mandated state programs to establish wellhead protection areas, see 42 USCS § 300h-7.

JUDICIAL DECISIONS

1. In general.

In suit by landowner against timber company seeking to enjoin company from polluting landowner's lake and for damages as result of pollution, finding that company has introduced sublethal level of pentachlorophenol (PCP) is not sufficient to require restoration of lake to previous unpolluted state but does entitle landowner to injunction enjoining and prohibiting further PCP pollution into lake by company. Phillips v. Davis Timber Co., 468 So. 2d 72 (Miss. 1985).

A company whose operating permit had been revoked on the ground that it had failed to eliminate unpleasant odors from its factory was properly granted a petition permanently enjoining the Permit Board from proceeding against it where the Mississippi Air and Water Pollution Control Commission had failed to set definable, objective standards with respect to the emission of odors as required by § 49-17-19. Mississippi Air & Water Pollution Control Permit Bd. v. Pets & Such Foods, Inc., 394 So. 2d 1353 (Miss. 1981).

RESEARCH REFERENCES

ALR. Standing to sue for violation of state environmental regulatory statute. 66 A.L.R.4th 685.

Measure and element of damages for pollution of well or spring. 76 A.L.R.4th 629.

Availability of Court of Appeals review, under § 509(b)(1)(E) of Federal Water Pollution Control Act (33 USCS § 1369(b)(1)(E)), of action by Administrator of Environmental Protection Agency in approving or promulgating effluent and other limitations. 62 A.L.R. Fed. 906.

Citizen's action under 33 USCS § 1365(a)(1) for violation of effluent standards or limitations under Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.) or orders with respect thereto. 68 A.L.R. Fed. 701.

Environmental protection agency's classifications of air quality control regions under § 107(d)(2) of Clean Air Act (42 USCS § 7407(d)(2)). 75 A.L.R. Fed. 328.

Clean Air Act implementation plans for nonattainment areas. 90 A.L.R. Fed. 481.

Am Jur. 61C Am. Jur. 2d, Pollution Control § 677.

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Forms 1 et seq. (air pollution); 11 et seq. (water pollution and sewage disposal); 31 et seq. (multiple environmental threats from single source).

CJS. 93 C.J.S., Waters §§ 93-97.

Law Reviews. 1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 49-17-21. Inspections and investigations; access to and maintenance of records; testing and sampling; monitoring equipment.

(a) The commission or its duly authorized representative shall have the power to enter at reasonable times upon any private or public property, and the owner, managing agent or occupant of any such property shall permit such entry for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any air or waters of the state and to have access to such records as the commission may require under subsection (b) of this section.

(b) The commission may require the maintenance of records relating to the operation of air contamination sources or water disposal systems, and any authorized representative of the commission may examine and copy any such records or memoranda pertaining to the operation of such air contamination source or water disposal system. The records shall contain such information as the commission may require. Copies of such records shall be submitted to the commission upon request.

(c) The commission may conduct, authorize or require tests and take samples of air contaminants or waste waters, fuel, process material or other material which affects or may affect (1) emission of air contaminants from any source, or (2) waste water disposal systems. Upon request of the commission, the person responsible for the source to be tested shall provide necessary sampling ports in stacks or ducts and such other safe and proper sampling and testing facilities as may be necessary for proper determination of the emission of air contaminants. If an authorized employee of the commission during the course of any inspection obtains a sample of air contaminant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(d) The commission may require the installation, maintenance and use of such monitoring equipment and methods at such locations and intervals as the commission deems necessary.

SOURCES: Codes, 1942, § 7106-122; Laws, 1966, ch. 258, § 12; Laws, 1968, ch. 440, § 1; Laws, 1972, ch. 505, § 10; Laws, 1973, ch. 412, § 1; Laws, 1977, ch. 327, § 3, eff from and after passage (approved March 4, 1977).

Cross References — Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

RESEARCH REFERENCES

ALR. Pollution control: validity and construction of statutes, ordinances, or regulations controlling discharge of industrial wastes into sewer systems. 47 A.L.R.3d 1224.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

61C Am. Jur. 2d, Pollution Control §§ 1887, 1888.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-22. Enforcement powers of Commission on Marine Resources; cooperation with commission or environmental quality.

The Commission on Marine Resources is hereby authorized to cooperate with the Commission on Environmental Quality for the enforcement of the provisions of Sections 49-17-1 through 49-17-43 in and on the salt waters of the State of Mississippi.

SOURCES: Codes, 1942, § 7106-116 (last ¶); Laws, 1972, ch. 505, § 5; Laws, 1994, ch. 578, § 59, eff from and after July 1, 1994.

Cross References — Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

§ 49-17-23. Record of minutes, rules, regulations and orders; annual publication, available to public; copies; index.

The commission shall keep the minutes of the commission, including all orders, rules and regulations promulgated, in a record book, or books, especially prepared for that purpose.

All minutes of commission meetings and hearings, and all rules, regulations, and orders made by the commission shall be in writing and shall be filed in full by the commission in a book for such purposes, to be kept by the commission which shall be a public record and open to inspection by the public at all times during all reasonable hours. The commission shall compile and publish annually the rules and regulations promulgated by the commission in current consolidated version. The commission shall provide the consolidated compilation of the rules and regulations to the public for a cost sufficient to cover printing and postage and administrative expenses, including the cost of any contractual services necessary to compile and publish such rules and regulations on an annual basis. A copy of any rule, minutes, regulation or order certified by the commission shall be received in evidence in all courts of this state with the same effect as the original. The commission shall compile and index on a current date basis all orders of the commission in a book for such purposes that shall be available for inspection and copying by the public. All responsibilities of the commission pursuant to this section may be delegated by the commission to the Executive Director.

SOURCES: Codes, 1942, §§ 7106-124, 7106-129; Laws, 1966, ch. 258, §§ 14, 19; Laws, 1972, ch. 505, §§ 12, 16; Laws, 1977, ch. 327, § 4; Laws, 1993, ch. 611, § 5, eff from and after passage (approved April 16, 1993).

Cross References — Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

RESEARCH REFERENCES

ALR. Validity of state and local air pollution administrative rules. 74 A.L.R.4th 566.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-25. Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement laws administered by Department of Environmental Quality; notice.

(1) Prior to the adoption, amendment or repeal of rules and regulations necessary to implement this chapter, Sections 17-17-1 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1 through 37-138-31, and all other laws administered by the department, the commission shall conduct a public hearing or hearings thereon after public notice. Such notice shall be given by publication once a week for three (3) successive weeks in a

newspaper having a general circulation throughout the state. The notice shall contain a description of the proposed regulation and the time, date and place of the hearing.

(2) Additionally, the adoption, amendment or repeal of any rule or regulation under this chapter, Sections 17-17-1 through 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1 through 37-138-31 and all other laws administered by the department shall be governed by the "Mississippi Administrative Procedures Law." Any rule or regulation heretofore or hereafter adopted, amended or repealed in substantial compliance with the procedural requirements under Section 25-43-7 shall be valid. A proceeding to contest any rule or regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one (1) year from the effective date of the rule or regulation.

(3) Notice of rules and regulations adopted by the commission shall be published once in a newspaper having general circulation throughout the state.

SOURCES: Codes, 1942, § 7106-130; Laws, 1966, ch. 258, § 20; Laws, 1977, ch. 327, § 5; Laws, 1991, ch. 333 § 2, eff from and after passage (approved March 15, 1991).

Editor's Note — Section 37-138-31 referred to in this section was repealed by Laws, 1994, ch. 508, § 7, eff from and after June 30, 1994.

Cross References — Mississippi Administrative Procedures Laws, see §§ 25-43-1.101 et seq.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Commission, upon determination that proper conditions exist, may give notice of intent to declare need to establish water use caution area, and hold public hearing, as provided in this section and section 25-43-7, see § 51-3-11.

ATTORNEY GENERAL OPINIONS

It is unnecessary for the Mississippi Commission on Environmental Quality to follow the public notice procedures set forth in the Mississippi Administrative Procedures Law and the Mississippi Air and Water Pollution Control Act prior to the reformatting, renaming, renumbering, and recompiling of previously promulgated rules and regulations as long as there are no substantive changes to these rules; however, upon the completion of this reorganization of the rules and regulations, an updated version should be provided to the Secretary of State's Office. Barlow, June 12, 1998, A.G. Op. #98-0343.

RESEARCH REFERENCES

ALR. Validity of state and local air pollution administrative rules. 74 A.L.R.4th 566.

§ 49-17-26. Notification procedures as to chemicals in underground water exceeding state standards.

If the commission determines, after adequate scientific investigation and evaluation, that a chemical as defined in Sections 69-23-3 and 75-47-5(a) in the underground water exceeds or is likely to exceed duly adopted state standards and that the source of the chemical is not within the regulatory jurisdiction of the commission, the commission shall notify the Department of Agriculture and Commerce, which shall proceed in accordance with Section 69-23-7 and other existing laws.

SOURCES: Laws, 1987, ch. 523, § 3, eff from and after July 1, 1987.

Cross References — Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Notice from Commissioner of Environmental Quality, under this section, to be given in relation to modification of labeling or suspension or cancellation of registration, in relation to pesticides, see § 69-23-7.

Modification of labeling, suspension, or cancellation of registration of any fertilizer pursuant to notice from Commission on Natural Resources under this section, see § 75-47-7.

§ 49-17-27. Emergency orders; public notice of emergency situations.

In the event an emergency is found to exist by the commission, it may issue an emergency order as circumstances may require. Said emergency order shall become operative at the time and date designated therein and shall remain in force until modified or cancelled by the commission or superseded by a regular order of the commission or for a period of forty-five (45) days from its effective date, whichever shall occur first, and may be enforced by an injunction if necessary.

The chancery court shall always be deemed open for hearing requests for injunctions to enforce such emergency orders and the same shall have precedence over other matters.

When, in the opinion of the commission or its executive director, an emergency situation exists which creates an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people of this state, notice shall be given immediately to local governing authorities, both county and municipal, the state emergency management organization, and the governor for appropriate action in accordance with applicable laws for protections against disaster situations.

SOURCES: Codes, 1942, § 7106-123; Laws, 1966, ch. 258, § 13; Laws, 1972, ch. 505, § 11; Laws, 1980, ch. 491, § 25, eff from and after passage (approved May 9, 1980).

Editor's Note — Section 49-17-5 provides that the word "commission", for purposes of §§ 49-17-1 through 49-17-43, means the Mississippi Commission on Natural Resources acting through the Bureau of Pollution Control of the Department of Natural Resources. Section 49-17-7 provides that the words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Natural Resources. Section 49-2-6, however, provides that the term "Mississippi Commission on Natural Resources" shall mean the Mississippi Commission on Environmental Quality wherever it may appear in the laws of the State of Mississippi.

Cross References — State emergency management agency, see §§ 33-15-1 et seq.

RESEARCH REFERENCES

ALR. Validity of state and local air pollution administrative rules. 74 A.L.R.4th 566.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-28. Permit board; membership; compensation.

(1) There is created a Permit Board for the purpose of issuing, reissuing, modifying, revoking or denying, under the conditions, limitations and exemptions prescribed in Section 49-17-29: (a) permits to control or prevent the discharge of contaminants and wastes into the air and waters of the state; (b) permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1 through 51-3-55; (d) water quality certifications required by Section 401 of the federal Clean Water Act; and (e) all other permits within the jurisdiction of the Permit Board. The membership of the Permit Board shall be composed of the Chief of the Bureau of Environmental Health of the State Board of Health, or his designee; the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee; the Head of the Office of Land and Water Resources of the Department of Environmental Quality, or his designee; the Supervisor of the State Oil and Gas Board, or his designee; the Executive Director of the Department of Marine Resources, or his designee; the Head of the Office of Geology and Energy Resources of the Department of Environmental Quality, or his designee; the Commissioner of Agriculture and Commerce, or his designee; a retired professional engineer knowledgeable in the engineering of water wells and water supply systems, to be appointed by the Governor for a term concurrent with that of the Governor and until his successor is appointed and qualified; and a retired water well contractor, to be appointed by the Governor for a term concurrent with that of the Governor and until his successor is appointed and qualified. The retired professional engineer and the retired water well contractor shall only vote on matters pertaining to the Office of Land and Water Resources.

(2) Members of the Permit Board who are officers and employees of the state shall receive no compensation for their services on the board, but other board members shall receive per diem compensation as provided in Section 25-3-69. All board members shall be reimbursed for actual and necessary expenses, including mileage, incurred in the performance of their official duties as provided in Section 25-3-41.

(3) In implementing the authority granted under this section for the Permit Board to act on water quality certifications required by Section 401 of the federal Clean Water Act, the Permit Board shall authorize the Executive Director of the Department of Environmental Quality to make decisions on issuance, reissuance, denial, modification and revocation of water quality certifications on projects which the department has received no written adverse comments. The Permit Board may authorize the executive director to make decisions on water quality certifications for other projects. A decision of the executive director made under this authority shall be a decision of the Permit Board and shall be subject to a formal hearing and an appeal as provided in Section 49-17-29.

SOURCES: Laws, 1973, ch. 373, § 1; Laws, 1977, ch. 327, § 6; Laws, 1978, ch. 484, § 56; Laws, 1981, ch. 528, § 14; Laws, 1985, ch. 459, § 30; Laws, 1988, ch. 312, § 2; Laws, 1991, ch. 376, § 1; Laws, 1994, ch. 578, § 60; Laws, 1996, ch. 367, § 1; Laws, 1998, ch. 537, § 1; Laws, 1999, ch. 573, § 1, eff from and after July 1, 1999.

Editor's Note — Laws of 1998, ch. 537, § 4, effective June 1, 1998, provides as follows:

"SECTION 4. The provisions of Senate Bill No. 2895, 1998 Regular Session [Laws of 1998, ch. 537], are not intended to enlarge, abridge or diminish any authority or power, existing on the effective date of this act, of any county to adopt any regulations, resolutions or ordinances which are not inconsistent with the Mississippi Constitution or the Mississippi Code of 1972, as amended, and no provision of the act shall be construed as doing so."

Cross References — Loans from hazardous waste facility siting fund to municipalities or counties in which commercial hazardous waste facilities are permitted, see § 17-17-55.

Temporary moratorium on permitting of nonhazardous waste facilities, see § 17-17-59.

Environmental permit coordinator in Department of Economic and Community Development, see §§ 25-45-13 et seq.

Authority of executive director of Department of Environmental Quality regarding compliance with permit conditions, see § 49-2-13.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Permit board being the exclusive administrative authority concerning permits under the Solid Wastes Disposal Law and the Air and Water Pollution Control Law, see § 49-17-29.

Exclusive power of Permit Board to make decisions on air or water pollution control permits or solid waste permits, see § 49-17-29.

Provisions for regulation and control of water resources, see §§ 51-3-1 through 51-3-55.

Board, as used in chapter 3 of title 51, means the Permit Board of the State of Mississippi, see § 51-3-3.

Provision that the State Permit Board shall serve as the permitting authority for purposes of regulation of water resources usage, see § 51-3-15.

Federal Aspects — Section 401 of the Clean Water Act is codified at 33 USCS § 1341.

JUDICIAL DECISIONS

1. In general.

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

§ 49-17-29. Permit Board; prohibitions; air and water permits; solid waste and hazardous permits; permit hearings; permit appeals.

(1)(a) Except as in compliance with paragraph (b) of this subsection, it is unlawful for any person to cause pollution of the air in the state or to place or cause to be placed any wastes or other products or substances in a location where they are likely to cause pollution of the air. It is also unlawful to discharge any wastes, products or substances into the air of the state which exceed standards of performance, hazardous air pollutant standards, other emission standards set by the commission, or which reduce the quality of the air below the air quality standards or increments established by the commission or prevent attainment or maintenance of those air quality standards. Any such action is hereby declared to be a public nuisance.

(b) It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission. Concentrated animal feeding operations may be a source or a category of sources exempted under this paragraph. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on June 1, 1998.

(2)(a) Except as in compliance with paragraph (b) of this subsection, it is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. It is also unlawful to discharge any wastes into any waters of the state which reduce the quality of those waters below the water quality standards established by the commission; or to violate any applicable pretreatment standards or limitations, technology-based effluent limitations, toxic standards or any other limitations established by the commission. Any such action is declared to be a public nuisance.

(b) It is unlawful for any person to carry on any of the following activities, unless that person holds a current permit for that activity from the Permit Board as may be required for the disposal of all wastes which are or may be discharged into the waters of the state, or unless that person is exempted from holding a permit by a regulation promulgated by the commission: (i) the construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto, including, but not limited to, systems serving agricultural operations; (ii) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit; (iii) the construction, installation or operation of any industrial, commercial or other establishment, including irrigation projects or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (iv) the construction or use of any new outlet for the discharge of any wastes into the waters of the state. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on June 1, 1998.

(3)(a) Except as otherwise provided in this section, the Permit Board created by Section 49-17-28 shall be the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification or revocation of air pollution control and water pollution control permits and permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17), and all other permits within the jurisdiction of the Permit Board. After consideration of alternative waste treatment technologies available to control air and water pollution and odor, including appropriate siting criteria, the commission may promulgate regulations establishing conditions, limitations and exemptions under which the Permit Board shall make these decisions. Regulations promulgated by the commission which establish exemptions as authorized under this section shall apply to any applicable facility in operation on the effective date of that regulation and to any applicable facility constructed or operated after the effective date of that regulation. The Permit Board may issue multiple permits for the same facility or operation simultaneously or in the sequence that it deems appropriate consistent with the commission's regulations. Except as otherwise provided in this paragraph, the Permit Board, under any conditions that the board may prescribe, may authorize the Executive Director of the Department of Environmental Quality to make decisions on permit issuance, reissuance, denial, modification or revocation. The executive director shall not be authorized to make decisions on permit issuance, reissuance, denial, modification or revocation for a commercial hazardous waste management facility or a municipal solid waste landfill or incinerator. A decision by the executive director shall be a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in this section. The executive director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be recorded in the minutes of the Permit Board. The decisions of the Permit Board shall be recorded in minutes of the Permit Board and shall be kept separate and apart from the minutes of the commission. The decision of the Permit Board or the executive director to issue, reissue, deny, modify or revoke permits shall not be construed to be an order or other action of the commission.

(b) The Executive Director of the Department of Environmental Quality shall also be the Executive Director of the Permit Board and shall have available to him, as Executive Director of the Permit Board, all resources and personnel otherwise available to him as executive director of the department.

(c) All persons required to obtain an air pollution control or water pollution control permit, a permit under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board shall make application for that permit with the Permit Board. The Permit Board, under any regulations as the commission may prescribe, may require the submission of those plans, specifications and other information as it deems necessary to carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter 17, or to carry out the commission's regulations adopted under those sections. The Permit Board, based upon any information as it deems relevant, shall issue, reissue, deny, modify or revoke air pollution control or water pollution control permit or permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board under any conditions as it deems necessary that are consistent with the commission's regulations. The Permit Board's action of issuance, reissuance, denial, modification or revocation of a permit as recorded in its minutes shall constitute a complete decision of the board. All permits issued by the Permit Board shall remain in full force and effect until the board makes a final determination regarding any reissuance, modification, or revocation thereof. The Permit Board shall take action upon an application within one hundred eighty (180) days following its receipt in the board's principal office. No action which affects revocation of an existing permit shall take effect until the thirty (30) days mentioned in paragraph (4)(b) of this section has expired or until a formal hearing as prescribed in that paragraph is held, whichever is later.

(d) The Permit Board may adopt rules of practice and procedure governing its proceedings that are consistent with the commission's regulations. All hearings in connection with permits issued, reissued, denied, modified or revoked and all appeals from decisions of the Permit Board shall be as provided in this section.

(e) Upon any conditions that are consistent with the commission's regulations and subject to those procedures for public notice and hearings as provided by law, not inconsistent with federal law and regulations, the Permit Board may issue general permits and, where appropriate, may consolidate multiple permits for the same facility or operation into a single permit.

(f) The Permit Board shall not issue any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation before January 1, 2000, unless the department received the application for that operation's new or modified permit before February 28, 1998, or except as provided in this paragraph (f). In issuing or modifying any permit for which the department received an application before February 28, 1998, the Permit Board shall apply those siting criteria adopted or used by the commission before February 28, 1998, unless federal law or regulations require more stringent criteria. The moratorium established in this paragraph shall not apply to the issuance of any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation that uses an animal waste management system which the applicant demonstrates to the Permit Board is innovative in significantly reducing the effects of the operation on the public health, welfare or the environment and which is approved by the Permit Board. The Permit Board shall not issue or modify more than five (5) permits under this innovative animal waste management system technology exemption to the moratorium.

(g) Each applicant for a permit for a new outlet for the discharge of wastes into the waters of the state who is required to obtain a certificate of public convenience and necessity from the Public Service Commission for such wastewater system shall submit financial and managerial information as required by the Public Utilities Staff. Following review of that information, the Executive Director of the Public Utilities Staff shall certify in writing to the executive director of the department, the financial and managerial viability of the system if the Executive Director of the Public Utilities Staff determines the system is viable. The Permit Board shall not issue the permit until the certification is received.

(4)(a) Except as required by this section, before the issuance, reissuance, denial, modification or revocation of any air pollution control or water pollution control permit, permit required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within its jurisdiction, the Permit Board, in its discretion, may hold a public hearing or meeting to obtain comments from the public on its proposed action. Before the issuance, reissuance, denial, modification pertaining to the expansion of a facility, transfer or revocation of a permit for a commercial hazardous waste management facility or a commercial municipal solid waste landfill or incinerator, the Permit Board shall conduct a public hearing or meeting to obtain comments from the public on the proposed action. That hearing or meeting shall be informal in nature and conducted under those procedures as the Permit Board may deem appropriate consistent with the commission's regulations.

(b) Within thirty (30) days after the date the Permit Board takes action upon permit issuance, reissuance, denial, modification or revocation, as recorded in the minutes of the Permit Board, any interested party aggrieved by that action may file a written request for a formal hearing before the Permit Board. An interested party is any person claiming an interest relating to the property or project which is the subject of the permit action, and who is so situated that the person may be affected by the disposition of that action.

The Permit Board shall fix the time and place of the formal hearing and shall notify the permittee of that time and place.

In conducting the formal hearing, the Permit Board shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to the hearings before it, with the additional power that the Executive Director of the Permit Board may issue all subpoenas at the instance of the Permit Board or at the instance of any interested party. Any subpoenas shall be served by any lawful officer in any county to whom the subpoena is directed and return made thereon as provided by law, with the cost of service being paid by the party on whose behalf the subpoena was issued. Witnesses summoned to appear at the hearing shall be entitled to the same per diem and mileage as witnesses attending the circuit court and shall be paid by the person on whose behalf the witness was called. Sufficient sureties for the cost of service of the subpoena and witness fees shall be filed with the Executive Director of the Permit Board at the time that issuance of the subpoena is requested. At a hearing, any interested party may present witnesses and submit evidence and cross-examine witnesses.

The Permit Board may designate a hearing officer to conduct the formal hearing on all or any part of the issues on behalf of the Permit Board. The hearing officer shall prepare the record of the formal hearing conducted by that officer for the Permit Board and shall submit the record to the Permit Board.

Upon conclusion of the formal hearing, the Permit Board shall enter in its minutes the board's decision affirming, modifying or reversing its prior decision to issue, reissue, deny, modify or revoke a permit. The Permit Board shall prepare and record in its minutes findings of fact and conclusions of law supporting its decision. That decision, as recorded in its minutes with its findings of fact and conclusions of law, shall be final unless an appeal, as provided in this section, is taken to chancery court within twenty (20) days following the date the decision is entered in the board's minutes.

(c) Within twenty (20) days after the date the Permit Board takes action upon permit issuance, reissuance, denial, modification or revocation after a formal hearing under this subsection as recorded in the minutes of the Permit Board, any person aggrieved of that action may appeal the action as provided in subsection (5) of this section.

(5)(a) Appeals from any decision or action of the Permit Board shall be only to chancery court as provided in this subsection.

(b) Any person who is aggrieved by any decision of the Permit Board issuing, reissuing, denying, revoking or modifying a permit after a formal hearing may appeal that decision within the period specified in subsection (4)(c) of this section to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed by the Permit Board and to be filed with and approved by the Executive Director of the Permit Board, who shall forthwith certify the filing of the bond together with a certified copy of the record of the Permit Board in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided in this section shall not stay the decision of the Permit Board. The aggrieved party may, within twenty (20) days following the date the board's decision after a formal hearing is entered on the board's minutes, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant that appeal with supersedeas. If granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the Permit Board. The chancery court shall always be deemed open for hearing of an appeal and the chancellor may hear the same in termtime or in vacation at any place in the chancellor's district, and the appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed. If prejudicial error is found the decision of the board shall be reversed and the chancery court shall remand the matter to the Permit Board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, that party may apply for a supersedeas to the chancellor of that court, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result thereby; but otherwise, the chancellor shall require a supersedeas bond as the chancellor deems proper, which shall be liable to the state for any damage.

SOURCES: Codes, 1942, § 7106-118; Laws, 1966, ch. 258, § 8; Laws, 1972, ch. 505, § 6; Laws, 1973, ch. 373, § 1; Laws, 1977, ch. 327, § 7; Laws, 1981, ch. 528, § 15; Laws, 1991, ch. 561, § 1; Laws, 1992, ch. 583 § 15; Laws, 1996, ch. 335, § 1; Laws, 1998, ch. 537, § 2; Laws, 2002, ch. 401, § 1, eff from and after July 1, 2002.

Editor's Note — Laws of 1998, ch. 537, § 4, effective June 1, 1998, provides as follows:

"SECTION 4. The provisions of Senate Bill No. 2895, 1998 Regular Session [Laws of 1998, ch. 537], are not intended to enlarge, abridge or diminish any authority or power, existing on the effective date of this act, of any county to adopt any regulations, resolutions or ordinances which are not inconsistent with the Mississippi Constitution or the Mississippi Code of 1972, as amended, and no provision of the act shall be construed as doing so."

Cross References — Proceedings before permit board of the bureau of pollution control conducted in accordance with this section, see § 17-17-43.

Application of this section to appeals to chancery court from orders of Commission on Environmental Quality or permit board on solid waste disposal matters, see § 17-17-45.

Unlawfulness of operating commercial nonhazardous solid waste management landfill under this section unless operator holds certificate as provided in §§ 21-27-201 through 21-27-221, see § 21-27-211.

Wastewater facilities as applied to the Municipal and Domestic Water and Wastewater System and Nonhazardous Solid Waste Management Facilities Operator's Certification Act of 1992, see §§ 21-27-201 et seq.

Fees of witnesses in circuit court, see § 25-7-47.

Disposition and use of funds collected from violations of Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Standards of water quality, see § 49-17-19.

Penalty for violation of this section or of a permit issued under this section, see § 49-17-43(e).

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Provision that hearings of the State Permit Board with respect to water resource usage permits shall be conducted in accordance with subsection (4) of this section, see § 51-3-15.

Appeal to chancery court from order of State Permit Board or Commission on Environmental Quality with respect to water resource regulation, see § 51-3-49.

Hearings before the Commission of Environmental Quality relative to water resource regulation, see § 51-3-51.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.
3. Appeals.

4-5. [Reserved for future use.]

6. Under former law.

1. In general.

Although the Mississippi Air and Water Pollution Control Law made it unlawful for a person to cause pollution of the air or waters under Miss. Code Ann. § 49-17-29 and allowed private party participation under Miss. Code Ann. § 49-17-35 to initiate a request with the state department of environmental quality, the law provided neither a private right of action or a private remedy for persons adversely affected by air or water pollution; the claims against hog farm operators were also barred by the Right to Farm Law of Miss. Code Ann. § 95-3-29(1) in that the farms had been operating more than a year without a substantial change in operation. Norman v. Prestage Farms, Inc., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 24456 (N.D. Miss. Mar. 30, 2007).

United States Bankruptcy Court for the Northern District of Mississippi held in abeyance its final decision on defendants, Prestage Farms', motion for summary judgment pending briefing by the parties because it was unclear whether under the Mississippi Air and Water Pollution Control law, codified in Miss. Code Ann. § 47-17-1 et seq., if plaintiffs could maintain a private cause of action of nuisance, if they could, their action was not time barred under Miss. Code Ann. § 95-3-29. Norman v. Prestage Farms, Inc. (In re Moore), — Bankr. —, 2004 Bankr. LEXIS 294 (Bankr. N.D. Miss. Mar. 2, 2004).

The Mississippi Commission on Environmental Quality (Commission) acted arbitrarily and capriciously, and in conflict with the moratorium statute (§ 17-17-59), in deciding that it had no jurisdiction pertaining to the issuance, modification, revocation or transfer of a non-hazardous solid waste disposal permit while also holding that it did have jurisdiction over the parties and subject matter concerning Commission rules and regulations requiring the contract operator of the solid waste facility to hold a permit; these 2 determinations were totally inconsistent in view of the process in which §§ 49-2-1 et seq. and 49-17-1 et seq. determine the hierarchy and method in which the Commission and the Mississippi Environmental Quality Permit Board are to govern, and §§ 17-17-1 et seq. clearly delegated authority to the Commission to enact sufficient rules and regulations to both define "transfer" and sufficiently carry out the process as a matter of important public policy. Mississippi Dep't of Envtl. Quality v. Weems, 653 So. 2d 266 (Miss. 1995).

In reviewing an order by the Mississippi Commission on Environmental Quality (Commission) requiring a county board of supervisors to bring its sanitary landfill into compliance with the closure requirements of the Mississippi Nonhazardous Waste Regulations and imposing a $4000 penalty, a chancellor exceeded the limited scope of review for agency decisions where the chancellor affirmed the Commission's order but modified it by ordering that the penalty be deposited into a separate fund to be spent curing the violations, instead of being paid into the Pollution Emergency Fund as provided by § 49-17-68, and that any funds remaining after closure be returned to the general fund of the county; a penalty should be assessed under the same standard of review as is employed when reviewing other agency findings and actions, and therefore the chancellor had no authority to substitute his own judgment for that of the agency by replacing the penalty with one he felt was more suited to the circumstances. Mississippi Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supvrs., 621 So. 2d 1211 (Miss. 1993).

There is no suggestion of partiality or impropriety in the use of an assistant attorney general as a hearing officer in a hearing before the Department of Natural Resources Permit Board; the attorney general's office affords counsel to state agencies and there is no conflict or suggestion of unfairness in this arrangement. Thus, an environmental organization, which objected to a modified air emissions permit and was afforded an administrative hearing before the Natural Resources Permit Board, was not denied due process of law on the ground that the hearing officer who sat with the Board was a special assistant attorney general. Furthermore, the environmental organization waived any objections it might have had where it made no objection before the Board and proceeded through the hearing without objection, and the organization admitted having knowledge of the identity of the hearing officer as an assistant attorney general well before the hearing and in time to object if any legitimate objection existed. United Cement Co. v. Safe Air for The Env't, Inc., 558 So. 2d 840 (Miss. 1990).

A lessee operator of a holding pond for creosote runoff was required to close the hazardous waste unit since he had not obtained a permit where creosote compounds were present in the pond and there was a potential for pollution even though there had been no contamination. Penick v. Mississippi Comm'n on Natural Resources, 533 So. 2d 179 (Miss. 1988).

A company whose operating permit had been revoked on the ground that it had failed to eliminate unpleasant odors from its factor was properly granted a petition permanently enjoining the Permit Board from proceeding against it where the Mississippi Air and Water Pollution Control Commission had failed to set definable, objective standards with respect to the emission of odors as required by § 49-17-19. Mississippi Air & Water Pollution Control Permit Bd. v. Pets & Such Foods, Inc., 394 So. 2d 1353 (Miss. 1981).

This section [Code 1942, § 7106-118] makes it unlawful for a person to operate equipment which will cause the issuance of air contaminants unless he holds a permit from the air and water pollution commission, and in a prosecution for violation of this article the state's evidence must show not only the issuance of air contaminants, but also the absence of a permit from the commission. State v. Pascagoula Veneer Co., 227 So. 2d 286 (Miss. 1969).

2. Constitutionality.

This section is not unconstitutional, notwithstanding the contention that it improperly gives the chancery court jurisdiction over appeals from the permit board. Zimmerman v. Three Rivers Planning & Dev. Dist., 747 So. 2d 853 (Miss. Ct. App. 1999).

3. Appeals.

Dismissal of the citizen's action challenging the issuance of environmental permits was improper where the imperfection was in his bond amount, not in his notice of appeal; thus, the court gave him an opportunity to correct his error, Miss. Code Ann. § 49-17-29(5)(b). Wheeler v. Miss. Dep't of Envtl. Quality Permit Bd., 856 So. 2d 700 (Miss. Ct. App. 2003).

The scope of appellate review on an appeal from the final decision of the Permit Board is limited to the administrative record and the findings of the agency. Golden Triangle Regional Solid Waste Mgmt. Auth. v. Concerned Citizens Against Location of Landfill, 722 So. 2d 648 (Miss. 1998).

In a proceeding pertaining to the placement of a landfill, the court erred when it expanded its scope of review to include issues concerning the planning stage which occurred before the permit application was made, instead of focusing only on the actions of the Permit Board which were at issue in the appeal. Golden Triangle Regional Solid Waste Mgmt. Auth. v. Concerned Citizens Against Location of Landfill, 722 So. 2d 648 (Miss. 1998).

4-5. [Reserved for future use.]

6. Under former law.

In an action for damages to plaintiff's land and timber as a result of deleterious affluents consisting of salt, water, and oil flowing upon the land from a producing oil well, the game and fish commission could not issue a retroactive certificate that the defendant had complied with commission's antipollution regulations on a date prior to the damage. Ginther v. Long, 227 Miss. 885, 87 So. 2d 286 (1956).

The issuance of a certificate of compliance by the game and fish commission, showing that effluents discharged into the lake would not destroy fish or animals, is not a bar to a suit for damages for pollution of a privately owned lake. Massey v. Masonite Corp., 219 F.2d 586 (5th Cir. 1955).

ATTORNEY GENERAL OPINIONS

The appellant must pay the appropriate filing fee to the chancery court to perfect an appeal from a decision of the Mississippi Department of Environmental Quality, subject to a pauper's right of appeal. Chisolm, July 10, 2002, A.G. Op. #02-0378.

Records of a county board of supervisors are public records and available for inspection, unless otherwise provided by the Mississippi Air and Water Pollution Act, upon the request of any person or entity. Chamberlin, Jan. 23, 2004, A.G. Op. 03-0540.

RESEARCH REFERENCES

ALR. Validity and construction of antiwater pollution statutes or ordinances. 32 A.L.R.3d 215.

Duty and liability as to plugging oil or gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Standing to sue for violation of state environmental regulatory statute. 66 A.L.R.4th 685.

Validity, construction, and application of variance provisions in state and local air pollution control laws and regulations. 66 A.L.R.4th 711.

What constitutes a violation of the prohibition, in the Oil Pollution Act of 1924 (33 USC §§ 431 et seq.), of discharge of oil into navigable waters and adjoining shorelines. 2 A.L.R. Fed. 794.

Validity, under federal constitution, of state statute or local ordinance regulating phosphate content of detergents. 21 A.L.R. Fed. 365.

Liability, under § 311(b)(6) of the Federal Water Pollution Control Act (33 USCS § 1321(b)(6)), of owner, operator, or person in charge of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 55 A.L.R. Fed. 141.

Citizen's action under 33 USCS § 1365(a)(1) for violation of effluent standards or limitations under Federal Water Pollution Control Act (33 USCS §§ 1251 et seq.) or orders with respect thereto. 68 A.L.R. Fed. 701.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5, 147.

CJS. 93 C.J.S., Waters §§ 93-97, 210, 211, 256.

Law Reviews. 1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

Rychlak, Common-Law remedies for environmental wrongs: The role of private nuisance. 59 Miss. L. J. 657, Winter, 1989.

§ 49-17-30. Title V permit fees.

(1) As a condition of any air operating permit required under Title V of the federal Clean Air Act, the owner or operator of any stationary source shall pay to the Department of Environmental Quality an annual permit fee. The commission shall establish the amount of each fee to cover the costs of the Title V program as provided in Section 49-17-14.

(2) To facilitate the proper administration of the Title V program, the commission is authorized to assess and collect fees from Title V program permittees. The commission is further authorized to promulgate such rules and regulations as are necessary for the development and administration of the Title V program and the assessment and collection of Title V program fees.

(a) For purposes of fee assessment and collection, the maximum emission rate of each pollutant used in the calculation of fees shall be four thousand (4,000) tons per year per facility.

(b) For purposes of fee assessment and collection, the permit holder shall elect for actual or allowable emissions to be used in determining the annual quantity of emissions unless the commission determines by order that the method chosen by the applicant for calculating actual emissions fails to reasonably represent actual emissions. Such order of the commission shall be subject to appeal in the manner provided in Section 49-17-41. Actual emissions shall be calculated using emission monitoring data or direct emissions measurements for the pollutant(s); mass balance calculations such as the amounts of the pollutant(s) entering and leaving process equipment and where mass balance calculations can be supported by direct measurement of process parameters, such direct measurement data shall be supplied; published emission factors such as those relating release quantities to throughput or equipment type (e.g., air emission factors); or other approaches such as engineering calculations (e.g., estimating volatilization using published mathematical formulas) or best engineering judgments where such judgments are derived from process and/or emission data which supports the estimates of maximum actual emissions.

If the commission determines that there is not sufficient information available on a facility's emissions, the determination of the fee shall be based upon the permitted allowable emissions until such time as an adequate determination of actual emissions is made.

(c) A minimum annual fee of Two Hundred Fifty Dollars ($250.00) shall be assessed to and collected from the owner or operator of each facility that is required to hold a Title V permit.

(3)(a) Prior to the date of full implementation of the Title V program in Mississippi, the fee assessed shall be Four Dollars ($4.00) per ton of emissions of each air pollutant for which fees can be assessed under the Title V program, not to exceed Fifty Thousand Dollars ($50,000.00) per facility.

(b) Following the date of full implementation of the Title V program in Mississippi, the fee schedule for Title V permit fees for any subsequent calendar year shall be set by order of the commission in an amount sufficient to cover the reasonable costs of development and administration of the Title V program. The commission's order shall follow:

(i) Receipt of the report and recommendations of the Advisory Council; and

(ii) A public hearing to be held not earlier than thirty (30) days following receipt by the commission of the report and recommendations of the Advisory Council. The commission may proceed with entry of the order on fees if the Advisory Council fails to submit its report in a timely manner. The order of the commission may be appealed in the manner set forth in Section 49-17-41. The determination of the fee shall be by order of the commission and shall not be considered the promulgation of a regulation by the commission. The record of the public hearing shall be included in the record upon which the order is based and shall become a part of the appellate records for all appeals taken from the order of the commission establishing or modifying Title V permit fees. Any undisputed amount due from an appellant must be paid according to the appellant's payment schedule during the pendency of the appeal.

(4) Any person required to pay the Title V permit fee set forth under this chapter who disagrees with the calculation or applicability of the person's fee may petition the commission in writing for a hearing in accordance with Section 49-17-35. Such hearing shall be in accordance with Section 49-17-33. Any disputed portion of the fee for which a hearing has been requested will not incur any penalty or interest from and after the receipt by the commission of the hearing petition. The decision of the commission may be appealed in the manner set forth in Section 49-17-41.

(5) All fees collected pursuant to this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund" established in Section 49-17-14.

SOURCES: Laws, 1993, ch. 611, § 3; Laws, 2012, ch. 321, § 1, eff from and after passage (approved Apr. 5, 2012.)

Amendment Notes — The 2012 amendment deleted the former last sentence of (2)(c) which read: "The maximum annual fee shall be Two Hundred Fifty Thousand Dollars ($250,000.00) per facility."

Cross References — Title V program defined, see § 49-17-14.

Expenses for Advisory Council created to conduct study as to costs and development of Title V, Clean Air Act, program, to be paid from fees collected in accordance with this section, see § 49-17-16.

Federal Aspects — Title V of the Clean Air Act is codified in 42 USCS §§ 7661, et seq.

§ 49-17-31. Proceedings before commission.

(a) Whenever the commission or an employee thereof has reason to believe that a violation of any provision of Sections 49-17-1 through 49-17-43 or Sections 17-17-1 through 17-17-47 or a regulation or of any order of the commission or of any limitation or condition of a valid permit has occurred, the commission may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provisions of said sections or regulation or order or permit alleged to be violated and the facts alleged to constitute a violation thereof, and shall require that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of. Said time of appearance before the commission shall be not less than ten (10) days from the date of the service of the complaint.

(b) The commission shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the commission shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47, and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing or made written request for notice of the order, and the commission may assess such penalties as hereinafter provided.

(c) Except as otherwise expressly provided, any notice, or other instrument issued by or under authority of the commission may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the commission; or such service may be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at his last known post-office address as shown by the files or records of the commission, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the commission.

SOURCES: Codes, 1942, § 7106-120; Laws, 1966, ch. 258, § 10; Laws, 1972, ch. 505, § 8; Laws, 1977, ch. 327, § 8; Laws, 1981, ch. 528, § 16; Laws, 1987, ch. 332, § 4, eff from and after July 1, 1987.

Cross References — Application of this section to hearings before Commission on Environmental Quality on solid waste disposal matters, see § 17-17-43.

Application of this section to proceedings before Commission on Environmental Quality for violations of provisions governing mineral leases, exploration or testing on state lands, see § 29-7-17.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-31-55.

RESEARCH REFERENCES

ALR. Necessity of showing scienter, knowledge, or intent, in prosecution for violation of air pollution or smoke control statute or ordinance. 46 A.L.R.3d 758.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

24 Am. Jur. Proof of Facts, Air Pollution § 50 (proof of Air Pollution).

25 Am. Jur. Proof of Facts, Water Pollution § 50 (proof of Inadequacy of Sewage Treatment), § 51 (proof of Inadequacy of Treatment of Industrial Wastes).

CJS. 93 C.J.S., Waters §§ 93-97.

Law Reviews. 1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 49-17-32. Collection of fees.

(1) The commission may delegate to the Department of Environmental Quality the responsibility for the collection of the Title V program fees.

(2) The air operating permit fee shall be due September 1 of each year. Any facility which proposes to use actual emissions as the basis for the fee calculation shall submit by July 1 of each year an inventory of emissions for the previous calendar year. For facilities using actual emissions as the basis of the fee, the fee shall be calculated based upon emissions during the previous calendar year. For facilities using allowable emissions as the basis for the fee, the fee shall be calculated based upon the allowable emissions contained in the permit on the date of the invoice. A permit holder may elect a quarterly payment method of four (4) equal payments with the payments due September 1, December 1, March 1, and June 1. The permit holder shall notify the Department of Environmental Quality that the quarterly payment method will be used by September 1.

(3) If any part of the air operating permit fee imposed is not paid within thirty (30) days after the due date, a penalty of ten percent (10%) of the amount due shall at once accrue and be added thereto, unless the permittee demonstrates to the commission that the failure to make timely payment was unavoidable due to financial hardship or otherwise beyond the permittee's control. If the fee is not paid in full, including any penalty within sixty (60) days of the due date, the Environmental Quality Permit Board may revoke the permit upon proper notice and hearing as required by law. Any penalty collected under this section shall be deposited into the "Air Operating Permit Program Fee Trust Fund."

(4) It is the intent of the Legislature that fees collected pursuant to Sections 49-17-1 through 49-17-45 shall not supplant or reduce in any way the General Fund appropriation to the Department of Environmental Quality.

SOURCES: Laws, 1993, ch. 611, § 4; Laws, 1995, ch. 510, § 1, eff from and after passage (approved March 29, 1995).

Cross References — Title V program defined; Air Operating Permit Program Fee Trust Fund, see § 49-17-14.

Federal Aspects — 42 U.S.C. Section 7661 et seq.

§ 49-17-33. Hearings.

The hearings herein provided may be conducted by the commission itself at a regular or special meeting of the commission, or the commission may designate a hearing officer, who may be the executive director, who shall have the power and authority to conduct such hearings in the name of the commission at any time and place as conditions and circumstances may warrant. The hearing officer shall have the record prepared of any hearing which he has conducted for the commission. Such record shall be submitted to the commission along with that hearing officer's findings of fact and recommended decision. Upon receipt and review of the record of the hearing and the hearing officer's findings of fact and recommended decision, the commission shall thereupon render its final decision in the matter. Any person ordered to appear for an alleged violation shall have the right to request a hearing before a majority of the commission if he prefers and such a hearing may then be set for the next regular meeting of the full commission, or specially. A verbatim record of the proceedings of such hearings shall be taken and filed with the commission, together with findings of fact and conclusions of law made by the commission. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction, upon application of the commission or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof. Failure to appear at any such hearing, without prior authorization to do so from the commission or its designee, may result in the commission finding the alleged violator guilty of the charges complained of by default, and at such time an order may be entered, including the assessment of a penalty, which, in the opinion of the commission, will best further the purposes of Section 17-17-1 et seq., and Section 49-17-1 et seq.

SOURCES: Codes, 1942, § 7106-121; Laws, 1966, ch. 258, § 11; Laws, 1972, ch. 505, § 9; Laws, 1987, ch. 332, § 5, eff from and after July 1, 1987.

Cross References — Application of this section to hearings before Commission on Environmental Quality on solid waste disposal matters, see § 17-17-43.

Application of this section to hearings before the Department of Environmental Quality on Uncontrolled Site Evaluation Trust fund fee assessments, see § 17-17-54.

Application of this section to proceedings before Commission on Environmental Quality for violations of provisions governing mineral leases, exploration or testing on state lands, see § 29-7-17.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Hearing, on challenge of calculation or applicability of Title V permit fee, to be conducted in accordance with this section, see § 49-17-30.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-3-55.

Federal Aspects — Title V of federal Clean Air Act, see 42 USCS §§ 7661 et seq.

JUDICIAL DECISIONS

1. In general.

There is no suggestion of partiality or impropriety in the use of an assistant attorney general as a hearing officer in a hearing before the Department of Natural Resources Permit Board; the attorney general's office affords counsel to state agencies and there is no conflict or suggestion of unfairness in this arrangement. Thus, an environmental organization, which objected to a modified air emissions permit and was afforded an administrative hearing before the Natural Resources Permit Board, was not denied due process of law on the ground that the hearing officer who sat with the Board was a special assistant attorney general. Furthermore, the environmental organization waived any objections it might have had where it made no objection before the Board and proceeded through the hearing without objection, and the organization admitted having knowledge of the identity of the hearing officer as an assistant attorney general well before the hearing and in time to object if any legitimate objection existed. United Cement Co. v. Safe Air for The Env't, Inc., 558 So. 2d 840 (Miss. 1990).

RESEARCH REFERENCES

ALR. Necessity of showing scienter, knowledge, or intent, in prosecution for violation of air pollution or smoke control statute or ordinance. 46 A.L.R.3d 758.

Air pollution: evidence as to Ringlemann Chart observation. 51 A.L.R.3d 1026.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-34. Air and water permits; applications; rules, regulations and standards; administrative procedures.

(1) Within fifteen (15) days after receipt by the Department of Environmental Quality an application for any initial or modified air or water permit required under the Mississippi Air and Water Pollution Control Law that is submitted after April 16, 1993 the Department of Environmental Quality shall acknowledge in writing receipt of such application. Except for good cause shown, within forty-five (45) days after receipt of a permit application, the Department of Environmental Quality shall notify the applicant that the application is complete or of the major components required to complete the application.

(2) All rules, regulations and standards relating to air quality, water quality or air emissions or water discharge standards promulgated by the commission after April 16, 1993 shall be consistent with and shall not exceed the requirements of federal statutes and federal regulations, standards, criteria and guidance relating to air quality, water quality or air emission or water discharge standards that have been duly promulgated pursuant to the federal Administrative Procedures Act, including but not limited to the identity and scope of air pollutants included as air toxics or air quality or emission standards, the identity and scope of water pollutants included as water quality or discharge standards and the numerical and narrative limitations of such standards.

(3) If there are no federal statutes or federal regulations, standards, criteria or guidance that have been duly promulgated pursuant to the federal Administrative Procedures Act addressing matters relating to air quality or water quality, or air emission or water discharge standards, the commission may promulgate regulations to address these matters in accordance with the Mississippi Administrative Procedures Act, when the commission determines that such regulations are necessary to protect human health, welfare or the environment.

(4) For any initial or modified air or water permit issued from and after January 1, 1994, except with the written consent of the permit applicant, no provision or condition imposing any duty, responsibility or liability on the permittee shall be included in such permit, the direct basis for which has not been first promulgated as a regulation by the commission in accordance with the requirements of the Mississippi Administrative Procedures Act. "Direct basis" shall mean that such permit provisions or conditions shall not exceed the scope, coverage and effect of the regulation upon which it is based including, but not limited to, frequency or time limit of action, technology, identity and scope of pollutants regulated, numerical or narrative standards or limitations.

SOURCES: Laws, 1993, ch. 611, § 6, eff from and after passage (approved April 16, 1993).

Cross References — Mississippi Administrative Procedure Law, see §§ 25-43-1 et seq.

Federal Aspects — Federal Administrative Procedure Act, see 5 USCS §§ 551 et seq., 701 et seq.

RESEARCH REFERENCES

ALR. Criminal proceedings, under § 309(c)(1,3) of the Federal Water Pollution Control Act (33 USCS § 1319(c)(1, 3)), based on violation of § 301(a) of the Act (33 USCS § 1311(a)), prohibiting discharge of pollutants without a permit. 53 A.L.R. Fed. 481.

What constitutes "issuing or denying" permit for discharge of pollutants within meaning of § 509(b)(1)(F) of the Federal Water Pollution Control Act (33 USCS § 1369(b)(1)F)) which authorizes judicial review of such action by Administrator of Environmental Protection Agency. 67

A.L.R. Fed. 365.

What constitutes "discharge of dredged or fill material" into navigable waters, so as to be subject to permit requirements under § 404(a) of Federal Water Pollution Control Act (33 USCS § 1344(a)). 72 A.L.R. Fed. 703.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 736, 740, 742, 753, 754, 765-777, 879, 1634, 1726-1733.

§ 49-17-35. Request for hearing.

Any interested person shall have the right to request the commission to call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon receipt of any such request, the commission shall conduct such investigations as it deems necessary and may call a special hearing or may schedule such matter for its next regular meeting or hearing day, and after such hearings and with all convenient speed and in any event within thirty (30) days after the conclusion of such hearing shall take such action on the subject matter thereof as it may deem appropriate.

SOURCES: Codes, 1942, § 7106-125; Laws, 1966, ch. 258, § 15; Laws, 1972, ch. 505, § 13, eff from and after passage (approved May 18, 1972).

Cross References — Application of this section to hearings before Commission on Environmental Quality, on solid waste disposal matters, see § 17-17-43.

Application of this section to hearings before the Department of Environmental Quality on Uncontrolled Site Evaluation Trust fund fee assessments, see § 17-17-54.

Application of this section to proceedings before Commission on Environmental Quality for violations of provisions governing mineral leases, exploration or testing on state lands, see § 29-7-17.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Right to petition for hearing, in accordance with this section, to challenge calculation or applicability of Title V permit fee, see § 49-17-30.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-3-55.

JUDICIAL DECISIONS

1. No private right of action.

Although the Mississippi Air and Water Pollution Control Law made it unlawful for a person to cause pollution of the air or waters under Miss. Code Ann. § 49-17-29 and allowed private party participation under Miss. Code Ann. § 49-17-35 to initiate a request with the state department of environmental quality, the law provided neither a private right of action or a private remedy for persons adversely affected by air or water pollution; the claims against hog farm operators were also barred by the Right to Farm Law of Miss. Code Ann. § 95-3-29(1) in that the farms had been operating more than a year without a substantial change in operation. Norman v. Prestage Farms, Inc., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 24456 (N.D. Miss. Mar. 30, 2007).

§ 49-17-36. Violations; penalties.

(1) It is unlawful for any person to knowingly: (a) fail to pay any fee assessed by the commission for administration of the federal air operating permit program; (b) fail to satisfy any air operating permit filing requirement; (c) make any false statement, representation of certification in any notice or report required by an air operating permit; or (d) render inaccurate any air monitoring device or method required by an air operating permit; and, upon conviction thereof, such person shall be punished by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Twenty-five Thousand Dollars ($25,000.00) per day of violation.

(2) In determining the amount of penalty under this section, the following shall be considered at a minimum:

(a) The willfulness of the violation;

(b) Any damage to air, water, land or other natural resources of the state or their uses;

(c) Costs of restoration or abatement;

(d) Economic benefit as a result of noncompliance;

(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and

(f) Past performance history.

(3) All fines collected by the commission under this section shall be deposited into the Pollution Emergency Fund established under Section 49-17-68, Mississippi Code of 1972.

SOURCES: Laws, 1993, ch. 611, § 7, eff from and after passage (approved April 16, 1993).

§ 49-17-37. Transcript of hearings.

All hearings before the commission shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the commission or any interested party, but in the event that the request for transcription originates with an interested party, such party shall pay the cost thereof.

SOURCES: Codes, 1942, § 7106-126; Laws, 1966, ch. 258, § 16, eff from and after July 1, 1966.

Cross References — Application of this section to hearings before Commission on Environmental Quality on solid waste disposal matters, see § 17-17-43.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-3-55.

RESEARCH REFERENCES

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-39. Protection of confidential information.

Information obtained by the commission concerning environmental protection including but not limited to information contained in applications for air emission equipment construction permits and water discharge permits shall be public information and shall be made available upon proper request. Other information obtained by the commission, department or permit board in the administration of Sections 49-17-1 through 49-17-43 concerning trade secrets, including, but not limited to, marketing or financial information, processes, devices, methods of manufacture, or production capabilities or amounts shall be kept confidential, if and only if: (a) a written confidentiality claim is made when the information is supplied; (b) such confidentiality claim allows disclosure of the confidential information to authorized department employees and/or the United States Environmental Protection Agency (EPA); and (c) such confidentiality claim is determined by the commission to be valid. If the confidentiality claim is denied, the information sought to be covered thereby shall not be released or disclosed, except to the Environmental Protection Agency, until the claimant has been notified in writing and afforded an opportunity for a hearing and appeal therefrom, as with other orders of the commission. Disclosure of confidential information by the EPA should be governed by federal law and EPA regulations. Anyone making unauthorized disclosure of information determined to be confidential as herein provided shall be liable in a civil action for damages arising therefrom and shall also be guilty of a misdemeanor punishable as provided by law.

SOURCES: Codes, 1942, § 7106-117; Laws, 1966, ch. 258, § 7; Laws, 1977, ch. 327, § 9; Laws, 1981, ch. 528, § 17; Laws, 1987, ch. 332, § 2, eff from and after July 1, 1987.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Section 49-17-5 provides that the word "commission", for purposes of §§ 49-17-1 through 49-17-43, means the Mississippi Commission on Natural Resources acting through the Bureau of Pollution Control of the Department of Natural Resources. Section 49-17-7 provides that the words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Natural Resources. Section 49-2-6, however, provides that the term "Mississippi Commission on Natural Resources" shall mean the Mississippi Commission on Environmental Quality wherever it may appear in the laws of the State of Mississippi.

Cross References — Application of this section to hearings before Commission on Environmental Quality on solid waste disposal matters, see § 17-17-43.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Application of this section to the disclosure of records, reports or information obtained pursuant to the underground storage tank act of 1988, see § 49-17-425.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-3-55.

Federal Aspects — Administrative rules of procedure of the United States Environmental Protection Agency, see USCS Administrative Rules of Procedure.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Proof of Facts 3d 473, Liability for Dioxin Contamination.

§ 49-17-41. Administrative appeals; appeals to chancery court; appeals to Supreme Court.

In addition to any other remedies that might now be available, any person or interested party aggrieved by any order of the commission or the executive director shall have a right to file a sworn petition with the commission within thirty (30) days after the order was issued setting forth the grounds and reasons for his complaint and asking for a hearing of the matter involved, provided that no hearing on the same subject matter shall have been previously held before the commission or its designated hearing officer. The commission shall thereupon fix the time and place of such hearing and shall notify the petitioners thereof. In such pending matters, the commission shall have the same full powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to hearings before it, with the additional power that the executive director may issue all subpoenas, both at the instance of the petitioner and of the commission. At such hearings the petitioner, and any other interested party, may offer, present witnesses and submit evidence.

Following such hearing, the final order of determination of the commission upon such matters shall be conclusive, unless the petitioner, or such other interested party appearing at the hearing, shall, within fifteen (15) days after the adjournment of the meeting at which said final order was made, appeal to the chancery court of the county where the hearing was held, or of the situs in whole or in part of the subject matter of the hearing by giving a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed in the order appealed from, to be filed with and approved by the executive director of the commission, who shall forthwith certify the same together with a certified copy of the record of the commission in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may, within said fifteen (15) days after the adjournment of the commission meeting at which said final order was entered, petition the chancery court of the situs in whole or in part of the subject matter for an appeal with supersedeas, and the chancellor shall grant a hearing on said petition and upon good cause shown may grant said appeal with supersedeas; the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the commission. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in termtime or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the chancery court shall remand the matter to the commission for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas, without additional bond, if in his judgment material damage is not likely to result thereby, but otherwise he shall require such supersedeas bond as he deems proper, which shall be liable to the state for such damage.

SOURCES: Codes, 1942, § 7106-128; Laws, 1966, ch. 258, § 18; Laws, 1972, ch. 505, § 15; Laws, 1987, ch. 332, § 6; Laws, 1988, ch. 312, § 3, eff from and after July 1, 1988.

Cross References — Application of this section to hearings before Commission on Environmental Quality on solid waste disposal matters, see § 17-17-43.

Application of this section to appeals to chancery court from orders of Commission on Environmental Quality or permit board on solid waste disposal matters, see § 17-17-45.

Application of this section to proceedings before Commission on Environmental Quality for violations of provisions governing mineral leases, exploration or testing on state lands, see § 29-7-17.

Appeal from decision of Commission on Environmental Quality under Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Orders of Commission on Natural Resources, with respect to permits in connection with Title V clean air program, subject to appeal in manner provided under this section, see § 49-17-30.

Application of this section to proceedings before the commission on violations of the underground storage tank act of 1988, see § 49-17-427.

Application of this section to the appeal rights of a person aggrieved by any decision with respect to the underground storage tank act of 1988, see § 49-17-431.

Appeal to chancery court from order of State Permit Board or Commission on Environmental Quality with respect to water resource regulation, see § 51-3-49.

Hearings before the Commission on Environmental Quality relative to water resource regulation, see §§ 51-3-51 and 51-3-55.

JUDICIAL DECISIONS

1. In general.

Hearings conducted solely to allow interested or affected citizens to express their views are not the type of hearings contemplated by § 49-17-41; the type of hearing contemplated under the statute is a "full blown evidentiary hearing where interested or aggrieved parties may offer evidence in support of their position by use of documentation and witnesses, both expert and lay." Mississippi Comm'n on Envtl. Quality v. Parker, 643 So. 2d 923 (Miss. 1994).

In reviewing an order by the Mississippi Commission on Environmental Quality (Commission) requiring a county board of supervisors to bring its sanitary landfill into compliance with the closure requirements of the Mississippi Nonhazardous Waste Regulations and imposing a $4000 penalty, a chancellor exceeded the limited scope of review for agency decisions where the chancellor affirmed the Commission's order but modified it by ordering that the penalty be deposited into a separate fund to be spent curing the violations, instead of being paid into the Pollution Emergency Fund as provided by § 49-17-68, and that any funds remaining after closure be returned to the general fund of the county; a penalty should be assessed under the same standard of review as is employed when reviewing other agency findings and actions, and therefore the chancellor had no authority to substitute his own judgment for that of the agency by replacing the penalty with one he felt was more suited to the circumstances. Mississippi Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supvrs., 621 So. 2d 1211 (Miss. 1993).

In an action by a citizens' group challenging the issuance of a waste water discharge permit to an industrial plant, a public hearing solely for the purpose of permitting interested parties to express their views with respect to discharge permits was insufficient to satisfy the hearing requirement of § 49-17-41, despite the prohibition in that section of multiple hearings on the same subject matter. Save the Bay, Inc. v. Mississippi Air & Water Pollution Control Comm'n, 341 So. 2d 98 (Miss. 1976).

ATTORNEY GENERAL OPINIONS

The appellant must pay the appropriate filing fee to the chancery court to perfect an appeal from a decision of the Mississippi Department of Environmental Quality, subject to a pauper's right of appeal. Chisolm, July 10, 2002, A.G. Op. #02-0378.

RESEARCH REFERENCES

ALR. Judicial review under § 16 of Noise Control Act of 1972 (42 USCS § 4915) of action of Administrator of Environmental Protection Agency. 59 A.L.R. Fed. 705.

CJS. 93 C.J.S., Waters §§ 107 et seq.

§ 49-17-42. Consideration as "owner"; exemption from liability.

(1) Any lender or holder who maintains indicia of ownership primarily to protect an interest in a property, facility, or other person, and who does not participate in the management of the property, facility, or other person, shall not be considered an owner or operator of that property, facility, or other person, nor liable under any pollution control or other environmental protection law, or any rule or regulation or written order of the commission in pursuance thereof, for the prevention, clean-up, removal, remediation or

abatement of any pollution, hazardous waste or solid waste placed, released or dumped on, in, about or near the property, facility or other person or caused by any operator on or of the property, facility or other person.

(2) This section shall apply to actions commenced by the commission or by third parties.

(3) In implementing this section, the commission shall adopt regulations equivalent to those proposed by the United States Environmental Protection Agency for this purpose.

(4) This section shall apply to all interests existing at the time of passage of this chapter and thereafter created, whether secured or unsecured.

SOURCES: Laws, 1995, ch. 627, § 4, eff from and after July 1, 1995.

Cross References — Liability provisions of Mississippi Underground Storage Tank Act of 1988 shall be limited as provided in this section and rules adopted under it, see §§ 49-17-405, 49-17-409.

Liability provisions of Mississippi Surface Mining and Reclamation Law shall be limited as provided in this section and rules adopted under it, see §§ 53-7-59, 53-7-63.

Liability provisions of Mississippi Surface Coal Mining and Reclamation Law shall be limited as provided in this section and rules adopted under it, see §§ 53-9-55, 53-9-67.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waters §§ 106 et seq.

CJS. 94 C.J.S. §§ 491, 493, 494.

§ 49-17-43. Penalties.

(1) Any person found by the commission violating any of the provisions of Sections 49-17-1 through 49-17-43, or any rule or regulation or written order of the commission in pursuance thereof or any condition or limitation of a permit, except a permit required under the Solid Wastes Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00), for each violation, such penalty to be assessed and levied by the commission after a hearing as provided hereinabove. Appeals from the imposition of the civil penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant. Each day upon which a violation occurs shall be deemed a separate and additional violation.

Any person violating any provision of the Solid Wastes Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), any rule or regulation made pursuant to that law, or any order issued by the commission under the authority of that law shall be subject to the penalties provided in Section 17-17-29.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 49-17-1 through 49-17-43, rules and regulations in force pursuant thereto, and orders and permits made and issued under those sections, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment as set forth in Section 49-17-27, it shall not be necessary in such cases that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Sections 49-17-1 through 49-17-43 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such sections, and causes the death of fish or other wildlife shall be liable, in addition to the penalties provided in subsections (1) and (2) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the appropriate county or circuit court of the county in which venue may lie.

(4) Any person who owns or operates facilities which, through misadventure, happenstance or otherwise, cause pollution necessitating immediate remedial or clean-up action shall be liable for the cost of such remedial or clean-up action and the commission may recover the cost of same by a civil action brought in the circuit court of the county in which venue may lie. This penalty may be recovered in lieu of or in addition to the penalties provided in subsections (1), (2) and (3) of this section.

In the event of the necessity for immediate remedial or clean-up action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission as provided above.

(5) It is unlawful for any person to: (a) discharge pollutants in violation of Section 49-17-29 or in violation of any condition or limitation included in a permit issued under Section 49-17-29 or (b) introduce pollutants into publicly owned treatment works in violation of pretreatment standards or in violation of toxic effluent standards; and, upon conviction thereof, such person shall be punished by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Twenty-five Thousand Dollars ($25,000.00) per day of violation.

(6) All fines, penalties and other sums recovered or collected by the commission for and in behalf of the state under this section shall be deposited

in the Pollution Emergency Fund established under this chapter, and the commission is authorized to receive and accept, from any funds and all available sources whatsoever, additional funds to be deposited in such fund and expended for the purpose of remedial, clean-up or abatement actions involving pollution of the land, air or waters of the state in violation of Sections 49-17-1 through 49-17-43, any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit.

(7) In determining the amount of any penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;

(b) Any damage to air, water, land or other natural resources of the state or their uses;

(c) Costs of restoration and abatement;

(d) Economic benefit as a result of noncompliance;

(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public;

(f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a person discovers as a result of a voluntary self-evaluation, information related to noncompliance with an environmental law and voluntarily discloses that information to the department, commission or any employee thereof, the commission shall, to the greatest extent possible, reduce a penalty, if any, determined by the commission, except for economic benefit as a result of noncompliance, to a de minimis amount if all of the following are true:

(i) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person;

(ii) The person making the disclosure initiates the appropriate corrective actions and pursues those corrective actions with due diligence;

(iii) The person making the disclosure cooperates with the commission and the department regarding investigation of the issues identified in the disclosure;

(iv) The person is not otherwise required by an environmental law to make the disclosure to the commission or the department;

(v) The information was not obtained through any source independent of the voluntary self-evaluation or by the department through observation, sampling or monitoring;

(vi) The noncompliance did not result in a substantial endangerment threatening the public health, safety or welfare or the environment; and

(vii) The noncompliance is not a repeat violation occurring at the same facility within a period of three (3) years. "Repeat violation" in this subparagraph means a second or subsequent violation, after the first violation has ceased, of the same statutory provision, regulation, permit condition, or condition in an order of the commission.

(8) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazard-

ous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

SOURCES: Codes, 1942, § 7106-127; Laws, 1966, ch. 258, § 17; Laws, 1972, ch. 505, § 14; Laws, 1973, ch. 402, § 1; Laws, 1977, ch. 327, § 10; Laws, 1981, ch. 528, § 18; Laws, 1988, ch. 311, § 4; Laws, 1991, ch. 334, § 2; Laws, 1995, ch. 627, § 6; Laws, 2003, ch. 301, § 2, eff from and after passage (approved Jan. 20, 2003.)

Cross References — Disposition and use of funds collected from violations of Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Power of executive director of Department of Environmental Quality to impose penalties pursuant to this section, see § 49-2-13.

Commission as meaning the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality, see § 49-17-5.

Disposition of fines, penalties or other sums recovered under water pollution abatement grant program, see § 49-17-61.

Pollution Emergency Fund, see § 49-17-68.

Application of this section to the levy and assessment of penalties for a violation of the underground storage tank act, see § 49-17-427.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Where the Mississippi Commission on Environmental Quality found that a tire company had committed numerous violations under a National Pollutant Discharge Elimination System (NPDES) permit, the tire company failed to demonstrate that it was singled out, or that it was selected for prosecution based upon protected classifications. Further, the appellate court deferred to the Mississippi Department of Environmental Quality's decision regarding the methodology limits the agency implemented, which were being based on concentration limits rather than mass limits; in the latter context, the Commission acted within its power in determining that the permit was not "fatally flawed" under the methodology implemented. Titan Tire of Natchez, Inc. v. Miss. Comm'n on Envtl. Quality, 891 So. 2d 195 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

The language in subsection (g)(vii)(6) concerning substantial endangerment includes serious harm to the public health, safety, or welfare or to the environment equivalent to the substantial endangerment language in Section 7003 of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.S. § 7003. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

Subsection (g)(vii) restricts only the Commission's prosecutorial authority and, therefore, penalties levied by the court are not restricted and the court can impose criminal or civil penalties otherwise provided by law in the prosecution of environmental criminal actions. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

RESEARCH REFERENCES

ALR. Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute. 81 A.L.R.3d 1258.

Criminal proceedings, under § 309(c)(1, 3) of the Federal Water Pollution Control Act (33 USCS § 1319(c)(1, 3)), based on violation of § 301(a) of the Act (33 USCS § 1311(a)), prohibiting discharge of pollutants without a permit. 53 A.L.R. Fed. 481.

Liability, under § 311(f, g) of Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance. 56 A.L.R. Fed. 343.

Am Jur. 52 Am. Jur. Trials 473, Toxic Experts.

25 Am. Jur. Proof of Facts 3d 473, Liability for Dioxin Contamination.

Law Reviews. Anderson, Philips, Kissleff, Liability insurance coverage for pollution claims. 59 Miss. L. J. 699, Winter, 1989.

§ 49-17-44. Applicants for water pollution control permit required to provide bonds or security; acceptable forms of security; creation of Water Pollution Control Bond Forfeiture Fund.

(1) The permit board may require any applicant for a water pollution control permit for the discharge of effluent from any sewer system certificated or required to be certificated by the Public Service commission to provide a bond or other acceptable financial security instrument payable to the Commission on Environmental Quality and conditioned upon full and satisfactory performance of the requirements of the Mississippi Air and Water Pollution Control Law and any water pollution control permit issued under that law. Any bond shall be executed by the permittee and a corporate surety licensed to do business in the state. The commission shall establish by regulation the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. The purpose of the bond or other financial security shall be the protection of the public health, welfare and the environment.

(2) The commission may enter an order requiring forfeiture of the bond or other financial security, if the commission determines that:

(a) The continued operation or lack of operation and maintenance of the facility covered by this section represents an imminent threat to the public health, welfare and the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee;

(b) Reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

(c) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the commission.

(3)(a) The proceeds of any forfeiture shall be deposited into a special fund created in subsection (5) of this section and shall be used by the commission or any receiver appointed by the Chancery Court of the First Judicial

District of Hinds County to address or correct the noncompliance at the facility or to continue operation and maintenance of the facility. The proceeds shall be in addition to any other funds otherwise appropriated to the department and may be expended under the authority of this section without additional action of the Legislature.

(b) The commission shall file an annual report detailing the receipts and expenditure of the bond forfeiture fund with the Chairmen of the House and Senate Appropriation Committees.

(4) If the commission finds that a facility has been abandoned or that services of a facility have been terminated, the commission may enter any orders regarding continued operations of that facility as it deems necessary to protect the public health, welfare and the environment.

(5)(a) There is created in the State Treasury a fund to be designated as the "Water Pollution Control Bond Forfeiture Fund." Monies in the fund shall be used by the commission or any receiver appointed by the court to address or correct the noncompliance at the facility or to continue operation and maintenance of the facility for which the bond or other financial security was forfeited.

(b) Expenditures may be made from the fund upon requisition by the executive director of the department.

(c) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the fund.

(d) The fund may receive monies from any available public or private source, including, but not limited to, proceeds from bond or other financial security forfeitures, interest, and funds from other judicial actions.

(6) An appeal from any decision of the commission under this section may be taken as provided in Section 49-17-41, Mississippi Code of 1972.

(7) This section shall be applicable to new applications for water pollution control permits and to existing water pollution control permits upon application for reissuance or transfer of a permit.

SOURCES: Laws, 1997, ch. 388, § 1, eff from and after passage (approved March 18, 1997).

§ 49-17-44.1. Petition for appointment of receiver to operate and manage abandoned or grossly mismanaged sewer systems.

If the commission determines that any privately owned sewer system that is certificated by the Public Service Commission and within its jurisdiction has been actually or effectively abandoned by its owner, or that its management is grossly inefficient or irresponsible, and the abandonment or management has created an environmental problem that endangers public health, the commission may petition the chancery court of any county wherein the privately-owned sewer system is located for an order attaching the assets of the privately-owned sewer system and placing such sewer system under the sole control and responsibility of a receiver. Any person served by the sewer system shall have standing to intervene in the chancery proceeding as an interested party. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, the allegations contained in the petition are true, it shall order that the sewer system be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, may appoint a receiver who shall be a responsible individual, partnership, corporation or political subdivision knowledgeable in sewer service affairs and who shall maintain control and responsibility for the operation and management of the affairs of such sewer system. The receiver shall operate the sewer system so as to preserve the assets of the sewer system and to serve the best interests of its customers while protecting public health and welfare and the environment. The receiver shall be compensated from the assets of the sewer system in an amount to be determined by the court. Control of and responsibility for the sewer system shall remain in the receiver until the court determines that it is in the best interests of the customers and the public interest that the sewer system be returned to the owner, transferred to another owner, or assumed by another sewer system or public service corporation. If the court, after hearing, determines that control of and responsibility for the affairs of the sewer system should not be returned to the legal owner thereof, the receiver may proceed to liquidate the assets of the sewer system in the manner provided by law. Mississippi laws and Mississippi Rules of Civil Procedure generally applicable to receivership shall govern receiverships created under this section. Any new owner or operator of a sewer system transferred or liquidated by the receiver or the chancery court under this subsection shall obtain all necessary permits and approvals from the Permit Board, the Public Service Commission and any other applicable state or local agencies.

SOURCES: Laws, 2002, ch. 487, § 1, eff from and after passage (approved Mar. 27, 2002.)

Cross References — Appointment of receivers by chancery court, generally, see §§ 11-5-151 et seq.

Receivership for certain drainage districts, see §§ 51-33-75 et seq.

Rule of procedure pertaining to appointment of receivers, see Miss. R. Civ. P. 66.

Preferences in transfer of ownership of privately owned water or sewer system in receivership, see § 77-3-22.1.

Placement of privately owned water and sewer systems in receivership, see § 77-3-22.

§ 49-17-45. Small Business Stationary Source Technical and Environmental Compliance Assistance program; Small Business Compliance Advisory Panel.

(1) The Mississippi Commission on Environmental Quality, acting through the Department of Environmental Quality, shall establish and administer, in accordance with the Federal Clean Air Act, the Mississippi Small

Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM).

(2) There is created the Mississippi Small Business Compliance Advisory Panel. The Mississippi Small Business Compliance Advisory Panel shall consist of the following members, the term of each to be concurrent with the term of the appointing official of that member:

(a) One (1) member representing the Air Pollution Control Program of the Department of Environmental Quality;

(b) Two (2) members who are not owners or representatives of owners of a small business, appointed by the Governor;

(c) Two (2) members who each shall be the owner or representatives of an owner of a small business, appointed by the Speaker of the House of Representatives; and

(d) Two (2) members who each shall be the owner or representatives of an owner of a small business, appointed by the Lieutenant Governor.

(3) The panel shall elect one (1) member to serve as chairman. The panel shall meet at the call of the chairman at Jackson, Mississippi, or such other places within the state designated by the panel; however, the panel shall not meet more than four (4) times during a calendar year.

(4) Members of the Mississippi Small Business Compliance Advisory Panel shall serve without salary, but each shall be entitled to receive per diem as provided in Section 25-3-69 and his actual travel and hotel expenses incurred while in the performance of his duties as a member of the committee in accordance with Section 25-3-41. Per diem and expenses shall be paid on an itemized statement approved by the State Fiscal Officer from fees collected under Section 49-17-30.

(5) The Mississippi Small Business Compliance Advisory Panel shall:

(a) Render advisory opinions concerning:

(i) The effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program;

(ii) Difficulties encountered; and

(iii) Degree and severity of enforcement;

(b) Make periodic reports to the Administrator of the U.S. Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the federal Paperwork Reduction Act, the federal Regulatory Flexibility Act, and the federal Equal Access to Justice Act;

(c) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(d) Have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

SOURCES: Laws, 1993, ch. 611, § 8, eff from and after passage (approved April 16, 1993).

Federal Aspects — Federal Equal Access to Justice Act, see 5 USCS §§ 504 et seq.
Federal Regulatory Flexibility Act, see 5 USCS §§ 601 et seq.
Federal Clean Air Act, see 42 USCS §§ 1857 et seq., 7401 et seq., 7601 et seq.
Federal Paperwork Reduction Act, see 44 USCS §§ 3501 et seq.

WATER POLLUTION ABATEMENT GRANT PROGRAM

SEC.
49-17-61. Water pollution abatement loan program established; water pollution abatement bond and loan funds.
49-17-63. Loans in aid; eligibility.
49-17-65. Waste disposal plants; construction loans; pledge for repayment; disposition of repaid funds; renegotiation of certain loans.
49-17-67. Repayment agreement.
49-17-68. Pollution Emergency Fund created; sources of funds.
49-17-69. Repayment of loan by political subdivision ineligible to pledge for repayment under §§ 49-17-65 and 49-17-67; disposition of repaid funds.
49-17-70. Repayment agreement; certificate of approved disposal plant.

§ 49-17-61. Water pollution abatement loan program established; water pollution abatement bond and loan funds.

There is hereby created for the State of Mississippi a Water Pollution Abatement Loan Program ("program") from which shall be made loans in aid of construction. Funds shall be available to any political subdivision legally authorized to own, maintain and operate a sewage, industrial waste or other waste collection, transport, treatment and disposal system. No recipient shall receive from state funds any loan in excess of twenty-five percent (25%) of the cost of construction of a project, unless said recipient shall become eligible on or after October 1, 1988, as set forth in Section 49-17-85(3).

Such cost of construction includes: preliminary planning to determine the economic and engineering feasibility of treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of treatment works; and the erection, building, acquisition, alteration, remodeling, improvement or extension of treatment works; and the inspection and supervision of the construction of treatment works.

No loan shall be made for any project under the provisions of Sections 49-17-61 through 49-17-67 unless such project is in conformity with the State Water Pollution Control Plan and has been certified by the Mississippi Commission on Natural Resources as entitled to priority over eligible projects on the basis of financial as well as water pollution control needs.

Loan funds generated by the issuance of bonds, legislative appropriations or otherwise, shall be deposited in an appropriate account or accounts created under the program.

There is hereby established a special fund designated as the Water Pollution Abatement Bond Fund ("bond fund"), which fund shall be maintained as a separate account in the State Treasury. All bonds which shall be issued by the State of Mississippi to generate funds to be used for loans under this section shall be payable as to principal, interest, premiums, if any, and service fees from the funds deposited in the bond fund. The bond fund hereby established shall be identical to and be a continuation of the Water Pollution Abatement Bond Fund authorized and established by the provisions of Chapter 471, General Laws of the State of Mississippi, 1971.

No funds heretofore deposited under any other laws to the credit of a special fund heretofore maintained in the State Treasury, and heretofore designated under such laws as the Water Pollution Abatement Bond Fund, shall be removed or transferred from such Water Pollution Abatement Bond Fund so maintained and designated under any other laws, except as shall be specifically authorized by law. When such removal or transfer shall be authorized, funds removed or transferred shall be deposited to the credit of a special fund hereby established and designated as the Water Pollution Abatement Loan Fund ("loan fund"), which fund shall be maintained as a separate account in the State Treasury.

Funds on deposit in the loan fund (a) may be used to make loans in aid of construction for water pollution abatement upon appropriation by the Legislature; (b) in the discretion of the commission, may be transferred to the Water Pollution Control Revolving Fund for the purpose of matching federal capitalization grants and for allowable uses; and (c) may be used for administration of the State Revolving Loan Program subject to legislative appropriation.

SOURCES: Codes, 1942, § 7106-143; Laws, 1971, ch. 456, § 3; Laws, 1981, ch 528, § 19; Laws, 1983, ch. 383, § 1; Laws, 1988, ch. 311, § 5; Laws, 1988, ch. 534, § 5, eff from and after passage (approved May 18, 1988).

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Advancement of funds from the water pollution abatement grant fund to pay costs of immediate remedial or clean-up action, see §§ 17-17-29, 49-17-17, 49-17-43.

Disposition of loan funds repaid by political subdivision ineligible to pledge for repayment under §§ 49-17-65, 49-17-67, see § 49-17-69.

Disposition of funds made in repayment of loans made under water pollution abatement grant program, see § 49-17-65.

Water Pollution Control Revolving Fund, see §§ 49-17-81 et seq.

RESEARCH REFERENCES

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 3-5.

61C Am. Jur. 2d Pollution Control §§ 1038, 1039.

CJS. 93 C.J.S., Waters § 98.

Law Reviews. Milner & Waggoner, Overview of Major Federal Environmental Acts and Regulations for the General Practitioner. 60 Miss. L. J. 1, Spring, 1990.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

§ 49-17-63. Loans in aid; eligibility.

Loans in aid of construction in amounts of Five Hundred Thousand Dollars ($500,000.00) or less made from state funds shall be made to the political subdivision eligible to receive such loan immediately upon approval of the award by the appropriate federal agency or agencies of a contract, or contracts, for construction.

The remainder of any such loan in aid of construction from state funds shall be made in installments in accord with rules and regulations adopted by the bureau of pollution control of the department of natural resources as authorized by subsection (h) of Section 49-17-17, Mississippi Code of 1972.

All such loans in aid of construction shall be made subject to the availability of funds.

SOURCES: Codes, 1942, § 7106-144; Laws, 1971, ch. 456, § 4; Laws, 1983, ch. 383, § 2, eff from and after passage (approved March 23, 1983).

Editor's Note — Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

Cross References — Loans made under Water Pollution Abatement Grant Program, see § 49-17-61.

§ 49-17-65. Waste disposal plants; construction loans; pledge for repayment; disposition of repaid funds; renegotiation of certain loans.

(1) Any political subdivision desiring to construct a waste disposal plant approved by the Office of Pollution Control of the Department of Environmental Quality, and which receives a loan from the state for that purpose, shall pledge for the repayment of such loan that part of the sales tax reimbursement to which it is entitled under Section 27-65-75 as may be required to meet a repayment schedule adopted by the State Tax Commission. The repayment schedule shall provide for monthly payments, the largest of which shall not exceed the average monthly payment for the term of years of the contract by more than fifteen percent (15%). The repayment schedule shall provide for the repayment of all funds received within not more than twenty (20) years from the date said loan is actually received by the political subdivision; however, the repayment schedule and the time for repayment of all funds received on loans renegotiated under subsection (6) of this section shall be modified by the State Tax Commission to conform with the terms of the renegotiated loan. The State Tax Commission shall withhold monthly from the amount to be remitted to a political subdivision, a sum equal to the next monthly payment.

(2) When bonds shall have been issued by the State of Mississippi to generate funds to be used for loans to be made under the provisions of Section 49-17-61, all payments made in repayment under this section shall be deposited into the Water Pollution Abatement Bond Fund established under

the provisions of Section 49-17-61 so long as any such bonds shall be outstanding and unpaid.

(3) When all the bonds shall have been paid, such payments shall be deposited in the Water Pollution Abatement Loan Fund ("loan fund") established under the provisions of Section 49-17-61.

(4) When no such bonds shall be outstanding and unpaid, the payments shall be deposited in the loan fund.

(5) Funds on deposit in the loan fund may be used to make loans in aid of construction for water pollution abatement upon appropriation by the Legislature.

(6) The Department of Environmental Quality may, on a case-by-case basis, renegotiate the payment of principal on loans made under Sections 49-17-61 through 49-17-70 to political subdivisions located in the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005; however, the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Codes, 1942, § 7106-141; Laws, 1971, ch. 496, § 1; Laws, 1983, ch. 383, § 3; Laws, 2006, ch. 545, § 2, eff from and after passage (approved Apr. 18, 2006.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Solid wastes disposal by counties and municipalities, see §§ 17-17-1 et seq.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Loans made under Water Pollution Abatement Grant Program, see § 49-17-61.

Repayment of loan by political subdivision ineligible to pledge for repayment under §§ 49-17-65, 49-17-67, see § 49-17-69.

§ 49-17-67. Repayment agreement.

Before any political subdivision shall receive any loan it shall have executed with the state tax commission a repayment agreement, a copy of which must also be filed with the bureau of pollution control of the department of natural resources, after which the bureau shall enter upon its minutes a certificate certifying that the waste disposal plant has been approved, a copy of which certificate must be delivered to and filed with the Mississippi State Tax Commission. The repayment schedule hereinabove provided for shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

SOURCES: Codes, 1942, § 7106-142; Laws, 1971, ch. 496, § 2; Laws, 1983, ch. 383, § 4, eff from and after passage (approved March 23, 1983).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Solid wastes disposal by counties and municipalities, see §§ 17-17-1 et seq.

Promotion of projects for treatment of solid and hazardous wastes, see §§ 17-17-101 et seq.

Loans made under Water Pollution Abatement Grant Program, see § 49-17-61.

Repayment of loan by political subdivision ineligible to pledge for repayment under §§ 49-17-65, 49-17-67, see § 49-17-69.

§ 49-17-68. Pollution Emergency Fund created; sources of funds.

The Pollution Emergency Fund is hereby created in the State Treasury. All fines, penalties or other money recovered or collected by the commission under Sections 17-17-29 and 49-17-43 shall be deposited into appropriate accounts in such fund. The commission is further authorized to receive and accept additional funds from any other source to be deposited into the Pollution Emergency Fund. The commission is authorized to utilize any funds in the Pollution Emergency Fund for the purpose of mitigation, abatement, clean-up or other remedial actions and related technical investigations involving the introduction of pollutants, including hazardous wastes, upon or into the land, air or waters of this state and may be used for the purpose of providing the required state matching funds to assist the U.S. Environmental Protection Agency in furtherance of its remedial clean-up program. When the acceptance of such funds by the commission is conditioned on the return of those funds to the grantor after use and recovery, such funds shall be returned to the grantor.

SOURCES: Laws, 1988, ch. 311, § 7, eff from and after July 1, 1988; Laws, 1991, ch. 396 § 1, eff from and after passage (approved March 15, 1991).

Cross References — Solid Wastes Disposal Law of 1974, see §§ 17-17-1 et seq.

Disposition of fines under the Solid Wastes Disposal Law of 1974, see § 17-17-29.

Disposition and use of funds collected from violations of Asbestos Abatement Accreditation and Certification Act, see § 37-138-27.

Mississippi Air and Water Pollution Control Law, see §§ 49-17-1 et seq.

Fines collected by Commission on Natural Resources for violations of federal air operating permit program to be deposited into Pollution Emergency Fund, see §§ 49-17-36, 69-23-3.

JUDICIAL DECISIONS

1. In general.

In reviewing an order by the Mississippi Commission on Environmental Quality (Commission) requiring a county board of supervisors to bring its sanitary landfill into compliance with the closure requirements of the Mississippi Nonhazardous Waste Regulations and imposing a $4000 penalty, a chancellor exceeded the limited scope of review for agency decisions where the chancellor affirmed the Commission's order but modified it by ordering that the penalty be deposited into a separate fund to be spent curing the violations, instead of being paid into the Pollution Emergency Fund as provided by § 49-17-68, and that any funds remaining after closure be returned to the general fund of the county; a penalty should be assessed under the same standard of review as is employed when reviewing other agency findings and actions, and therefore the chancellor had no authority to substitute his own judgment for that of the agency by replacing the penalty with one he felt was more suited to the circumstances. Mississippi Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supvrs., 621 So. 2d 1211 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

The statute does not authorize the Executive Director of the Mississippi Department of Environmental Quality to use funds from the Pollution Emergency Fund for staffing the Mississippi Emergency Management Agency emergency operations center, which receives reports and coordinates responses to a broad range of natural, technological, and man-made emergencies, including tornadoes, hurricanes, floods fires, and enemy attacks, sabotage or other hostile action. Barlow, June 16, 2000, A.G. Op. #2000-0280.

§ 49-17-69. Repayment of loan by political subdivision ineligible to pledge for repayment under §§ 49-17-65 and 49-17-67; disposition of repaid funds.

(1) Any political subdivision desiring to construct a waste disposal plant approved by the Office of Pollution Control of the Department of Environmental Quality and which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of Sections 49-17-65 and 49-17-67, shall repay the loan by making payments each month to the State Treasurer through the Department of Environmental Quality according to the provisions of Section 7-7-15, to be credited to the appropriate fund in lieu of pledging sales tax reimbursements.

(2) The repayment shall be according to a schedule prepared by the State Tax Commission in the same manner as such schedules are prepared for the state's other political subdivisions. The repayment schedule shall provide for monthly payments, the largest of which shall not exceed the average monthly payment for the term of years of the contract by more than fifteen percent (15%). The repayment schedule shall provide for the repayment of all funds received within no more than twenty (20) years from the date the loan is actually received by the political subdivision; however, the repayment schedule and the time for repayment of all funds received on loans renegotiated under Section 49-17-61(6) shall be modified by the State Tax Commission to conform with the terms of the renegotiated loan. The political subdivision shall remit its monthly payment by the twentieth of the month to the Department of Environmental Quality and the payments shall be made prior to the payments of principal or interest on any bonds issued by the political subdivision in connection with the project or projects to which the pollution abatement loans are made.

(3) The State Auditor shall annually audit the receipts and expenditures of each district whose monthly payments are to be received by him, and if he

should find such political subdivision in arrears for two (2) consecutive years, he shall immediately begin withholding from funds due the taxing district in which the political subdivision is located, under the provisions of Section 27-33-41(g) and (h), an amount equal to twelve (12) times the largest monthly payment due and issue his warrant for such amount to either one (1) of the two (2) special funds as directed below.

(4) The repayment schedule provided for in this section shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

(5) When bonds shall have been issued by the State of Mississippi to generate funds to be used for loans to be made under the provisions of Section 49-17-61, all payments made in repayment under this section shall be deposited into the Water Pollution Abatement Bond Fund established under the provisions of Section 49-17-61 so long as any such bonds shall be outstanding and unpaid.

(6) When all such bonds shall have been paid, the payments shall be deposited in the Water Pollution Abatement Loan Fund ("loan fund") established under the provisions of Section 49-17-61.

(7) When no such bonds shall be outstanding and unpaid, the payments shall be deposited in the loan fund.

(8) Funds on deposit in the loan fund may be used to make loans in aid of construction for water pollution abatement upon appropriation by the Legislature.

SOURCES: Codes, 1942, §§ 7106-151.3, 7106-151.5; Laws, 1972, ch. 403, §§ 1, 2; Laws, 1983, ch. 383, § 5; Laws, 1988, ch. 311, § 6; Laws, 1994, ch. 418, § 4; Laws, 2006, ch. 545, § 3, eff from and after passage (approved Apr. 18, 2006.)

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor,"and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

ATTORNEY GENERAL OPINIONS

The term "State Auditor" in Section 49-17-69 refers to and means the State Fiscal Officer as defined in Sections 7-7-2 and 27-104-6. Bryant, Dec. 28, 1999, A.G. Op. #99-0693.

§ 49-17-70. Repayment agreement; certificate of approved disposal plant.

Before any political subdivision shall receive any loan, it shall have executed with the state tax commission a repayment agreement, a copy of which must also be filed with the bureau of pollution control of the department of natural resources, after which the bureau shall enter upon its minutes a certificate certifying that the waste disposal plant has been approved; a copy of which certificate shall be delivered to and filed with the Mississippi State Tax Commission.

SOURCES: Codes, 1942, § 7106-151.5; Laws, 1972, ch. 403, § 2; Laws, 1983, ch. 383, § 6, eff from and after passage (approved March 23, 1983).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

TENNESSEE RIVER BASIN WATER POLLUTION CONTROL COMPACT

SEC.
49-17-71. Tennessee River Basin Water Pollution Control Compact.
49-17-73. When compact effective.
49-17-75. Commission created.
49-17-77. Authority of commissioners; construction of laws.

§ 49-17-71. Tennessee River Basin Water Pollution Control Compact.

The governor, on behalf of this state, is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Alabama, Georgia, Kentucky, North Carolina, Tennessee and Virginia, and the legislature hereby signifies in advance its approval and ratification of such compact:

Article I

The purpose of this compact is to promote effective control and reduction of pollution in the waters of the Tennessee River Basin through increased co-operation of the states of the basin, co-ordination of pollution control activities and programs in the basin, and the establishment of a joint interstate commission to assist in these efforts.

Article II

The party states hereby create the "Tennessee River Basin Water Pollution Control Commission," hereinafter referred to as the "commission," which shall be an agency of each party state with the powers and duties set forth herein, and such others as shall be conferred upon it by the party states or by the Congress of the United States concurred in by the party states.

Article III

A. The party states hereby create the "Tennessee River Basin Water Pollution Control District," hereinafter called the "district," which consists of the area drained by the Tennessee River and its tributaries.

B. From time to time the commission may conduct surveys of the basin, study the pollution problems of the basin, and make comprehensive reports concerning the prevention or reduction of water pollution therein. The commission may draft and recommend to the parties hereto suggested legislation dealing with the pollution of waters within the basin or any portion thereof. Upon request of a state water pollution control agency, and in a manner agreed upon by such agency and the commission, the commission shall render advice concerning the various governments, communities, municipalities, persons, corporations or other entities with regard to particular problems connected with the pollution of waters. The commission shall present to the appropriate officials of any government or agency thereof its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this article. The commission, upon request of a member state or upon its own instance may, after proper study, and after conducting public hearings, recommend minimum standards of water quality to be followed in the several areas of the district.

Article IV

The commission shall consist of three (3) commissioners from each state, each of whom shall be a resident voter of such state. The commissioners shall be chosen in the manner and for the terms provided by the laws of the state from which they are appointed, and each commissioner may be removed or suspended from office as provided by the law of the state from which he is appointed.

Article V

A. The commission shall elect annually from its members a chairman and a vice-chairman to serve at its pleasure. It shall adopt a seal and suitable by-laws for its management and control. The commission is hereby authorized to adopt, prescribe and promulgate rules and regulations for administering and enforcing all provisions of this compact. It may maintain one or more offices for the transaction of its business. Meetings shall be held at least once each year. It may determine duties, qualifications and compensation for and appoint such employees and consultants as may be necessary and remove or replace them.

B. The commission shall not compensate the commissioners for their services but shall pay their actual expenses incurred in and incidental to the performance of their duties.

C. The commission may acquire, by gift or otherwise, and may hold and dispose of such real and personal property as may be appropriate to the performance of its functions. In the event of sale of real property, proceeds may be distributed among the several party states, each state's share being computed in a ratio to its contributions; and in the event of dissolution of the commission, the property and assets shall be disposed of and proceeds distributed in a like manner.

D. Each commissioner shall have one vote. One or more commissioners from a majority of the party states shall constitute a quorum for the transaction of business, but no action of the commission imposing any obligation on any party state or any municipality, person, corporation or other entity therein shall be binding unless a majority of all of the members from such party state shall have voted in favor thereof. The commission shall keep accurate accounts of all receipts and disbursements, and shall submit to the governor and the legislature of each party state an annual report concerning its activities, and shall make recommendations for any legislative, executive or administrative action deemed advisable.

E. The commission shall at the proper time submit to the governor of each party state for his approval an estimate of its proposed expenditures. The commission shall subsequently adopt a budget and submit appropriation requests to the party states in accordance with the laws and procedures of such states.

F. The commission shall not pledge the credit of any of the party states. The Commission may meet any of its obligations in whole or in part with funds available to it, from gifts, grants, appropriations or otherwise, provided that the commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the commission makes use of funds already available to it, the commission shall not incur any obligations prior to the making of appropriations adequate to meet the same.

G. The accounts of the commission shall be open at any reasonable time to the inspection of such representatives of the respective party states as may be duly constituted for that purpose. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become a part of the annual report of the commission. The commission shall appoint an executive director. The commission shall also appoint a treasurer who may be a member of the commission. The executive director shall be custodian of the records of the commission with authority to attest to and certify such records and copies thereof under the seal of the commission. The commission shall require bonds of its executive director and treasurer in the amount of at least twenty-five per cent (25%) of the annual budget of the commission.

Article VI

Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. In determining these amounts, the commission shall prorate one half (½) of its budget among the several states in proportion to their land area within the district, and shall prorate the other half among the several states in proportion to their population within the district at the last preceding federal census.

Article VII

A. It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, industrial and agricultural uses, bathing and other recreational purposes, maintenance and propagation of fish life, navigation and disposal of wastes.

B. The commission may establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory states through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory state agrees to submit its classification of its interstate waters to the commission for approval. It is agreed that after such approval, all signatory states through their appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet standards established by the commission for classified waters. The commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

Article VIII

A. A state pollution control agency of any party state may certify to the commission an alleged violation of the commission's standards of quality of water entering said state. Upon such certification the commission may call a hearing at which the appropriate state pollution agencies shall be represented. If the commission finds a violation has occurred, is occurring or is likely to recur, it shall make recommendations as to the manner of abatement of the pollution to the appropriate water pollution control agency of the party state within which the violation has occurred, is occurring or is likely to recur. In the event that commission recommendations made pursuant to the preceding provisions of this article do not result in compliance within a reasonable time, the commission may, after such further investigation if any as is deemed necessary and proper and after a hearing held in the state where a violation occurs or has occurred, issue an order or orders upon any municipality, person, corporation or other entity within said party state violating provisions of this compact by discharging sewage or industrial wastes into the waters of the district which flow through, into or border upon any party state. Such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The commission shall give reasonable and proper notice in writing of the time and place of the hearing to the municipality, person, corporation or other entity against which such order is proposed except that when the commission shall find that a public health emergency exists, it may issue such an order pending hearing. In all such instances, the hearing shall be promptly held and the order shall be withdrawn, modified or made permanent within thirty (30) days after hearing. No order prescribing the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of shall go into effect upon a municipality, person, corporation or other entity in any state unless and until it receives the approval of a majority of the commissioners from each of not less than a majority of the party states, provided that such order receives the assent of not less than a majority of the commissioners from such state.

B. It shall be the duty of the municipality, person, corporation or other entity within a party state to comply with any such order against it or him by the commission, and any court of competent jurisdiction in any of the party states shall have jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, person, corporation or other entity domiciled, located or doing business within such state; provided, however, such court may review the order and affirm, reverse or modify the same in any appropriate proceeding brought and upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The commission or, at its request, the attorney general or other law enforcing official of the appropriate state shall have power to institute in such court any action for the enforcement of such order.

Article IX

Nothing in this compact shall be construed to limit the powers of any party state, or to repeal or prevent the enactment of any legislation, or the enforcement of any requirement by any party state, imposing any additional conditions and restrictions to further reduce or prevent the pollution of waters within its jurisdiction.

Article X

A. Nothing contained in this compact shall be construed so as to conflict with any provision of the Ohio River Valley Water Sanitation Compact or to impose obligations on any party state inconsistent with those which it has undertaken or may undertake by virtue of its membership in said compact; provided that nothing contained in this article shall be deemed to limit the commission's power to set higher standards for the waters of the Tennessee River Basin Water Pollution Control District or any portion thereof than those required for the Ohio River Valley Water Sanitation District.

B. Nothing contained in this compact shall be deemed to give the commission any power or jurisdiction over any aspect of pollution abatement or control within the district unless existing or future pollution of such waters does or is likely to affect adversely the quality of water flowing among, between, into or through the territory of more than one party state.

Article XI

Any two (2) or more of the party states by legislative action may enter into supplementary agreements for further regulation and abatement of water pollution in other areas within the party states and for the establishment of common or joint services or facilities for such purpose and designate the commission to act as their joint agency in regard thereto. Except in those cases where all member states join in such supplementary agreement and designation, the representatives in the commission of any group of such designating states shall constitute a separate section of the commission for the performance of the function or functions so designated and with such voting rights for these purposes as may be stipulated in such agreement; provided that, if any additional expense is involved, the member states so acting shall appropriate the necessary funds for this purpose. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of such a section as a joint agency shall not affect the privileges, powers, responsibilities or duties of the member states participating therein as embodied in the other articles of this compact.

Article XII

This compact shall enter into force and become effective and binding when it has been enacted by the legislature of Tennessee and by the legislatures of any one or more of the states of Alabama, Georgia, Kentucky, Mississippi, North Carolina and Virginia and upon approval by the Congress of the United States and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

Article XIII

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose; provided that such renunciation shall not become effective until six (6) months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given to the other party states by the secretary of state of the party state so renouncing upon passage of the act.

Article XIV

The provisions of this compact or of agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this compact, or such agreement, is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any state, agency, person or circumstances is held invalid, the constitutionality of the remainder of this compact or of any agreement thereunder and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact or any agreement thereunder shall be held contrary to the Constitution of the United States or of any state participating therein, the compact or any agreement thereunder shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. It is the legislative intent that the provisions of this compact shall be reasonably and liberally construed.

SOURCES: Codes, 1942, § 5931-01; Laws, 1956, ch. 170, § 1.

Comparable Laws from other States — Kentucky: KRS § 224.18-780

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 676.

CJS. 93 C.J.S., Waters §§ 93-97.

§ 49-17-73. When compact effective.

When the governor shall have executed the compact on behalf of this state and shall have caused a verified copy thereof to be filed with the state secretary, and when such compact shall have been ratified by one or more of the states named in Section 49-17-71, then compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

SOURCES: Codes, 1942, § 5931-02; Laws, 1956, ch. 170, § 2.

§ 49-17-75. Commission created.

The commission contemplated by Article IV of the above compact shall consist of three (3) members, as follows: One legislator, who may either be a member of the Mississippi State Senate or the Mississippi House of Representatives, to be appointed by the Mississippi Commission on Interstate Cooperation, and two (2) executive officers or employees in the executive branch of the state government whose duties, experience and abilities qualify them for such a position, to be appointed by the governor. Each member of the commission must be a qualified voter of this state and shall serve for a term of four (4) years and be eligible to immediately succeed himself.

SOURCES: Codes, 1942, § 5931-03; Laws, 1956, ch. 170, § 3.

§ 49-17-77. Authority of commissioners; construction of laws.

The three (3) commissioners from the State of Mississippi shall be authorized to do any and all things necessary in order to effectuate the terms and provisions of the compact contained herein and Sections 49-17-71 through 49-17-77 shall be entitled to a liberal interpretation in order to carry out the spirit and intent of the aforesaid compact.

SOURCES: Codes, 1942, § 5931-04; Laws, 1956, ch. 170, § 4.

WATER POLLUTION CONTROL REVOLVING FUND

SEC.
49-17-81. Short title.
49-17-83. Definitions.
49-17-85. Funds established; promulgation of regulations; uses of fund; administrative fees; renegotiation of certain loans.
49-17-86. Water Pollution Control Emergency Loan Fund; short title.
49-17-87. Pledge of moneys for repayment of loan; loan agreement and repayment schedule; audits; applicability of limitations on indebtedness.
49-17-89. Borrowing of monies, issuance of securities, etc., by political subdivisions authorized; issuance of municipal securities; validation of securities; provisions of section supplemental.

§ 49-17-81. Short title.

Sections 49-17-81 through 49-17-89 shall be known and cited as the "Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act."

SOURCES: Laws, 1988, ch. 534, § 1; Laws, 1996, ch. 455, § 2, eff from and after October 1, 1996.

Cross References — Authority of the Mississippi Development Bank to borrow money and issue bonds to be deposited into the Water Pollution Control Revolving Fund, see § 31-25-21.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 895.

§ 49-17-83. Definitions.

For the purposes of Sections 49-17-81 through 49-17-89, the following words and phrases shall have the meaning ascribed in this section:

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(b) "Commission" means the Mississippi Commission on Environmental Quality.

(c) "Department" means the Mississippi Department of Environmental Quality.

(d) "Emergency fund" means the "Water Pollution Control Emergency Loan Fund" created under Section 49-17-86.

(e) "Loan agreement" means an agreement by and among the commission, a political subdivision and the State Tax Commission to evidence the terms and provisions of a loan under Sections 49-17-81 through 49-17-89.

(f) "Loan fund" means the Water Pollution Abatement Loan Fund created pursuant to Section 49-17-61.

(g) "Municipal security" means a bond, note or other evidence of indebtedness issued by a political subdivision to evidence a loan pursuant to the provisions of Sections 49-17-81 through 49-17-89.

(h) "Political subdivision" means any county, municipality, utility, district, political subdivision, or other governmental unit created under state law.

(i) "Project" means a publicly owned wastewater collection, treatment or disposal system including sludge disposal, renovation, repair and upgrading of existing systems, nonpoint source pollution control management programs and estuary conservation and management programs, and otherwise qualified under rules of the commission pursuant to the federal Water Quality Act of 1987.

(j) "Revolving fund" means the Mississippi Water Pollution Control Revolving Fund created under Section 49-17-85.

(k) "State" means the State of Mississippi.

SOURCES: Laws, 1988, ch. 534, § 2; Laws, 1991, ch. 578, § 5; Laws, 1996, ch. 455, § 3, eff from and after October 1, 1996.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Commission on Environmental Quality, see §§ 49-2-5 and 49-2-9.

Bureau of Pollution Control, see § 49-2-7.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 895.

§ 49-17-85. Funds established; promulgation of regulations; uses of fund; administrative fees; renegotiation of certain loans.

(1) There is established in the State Treasury a fund to be known as the "Water Pollution Control Revolving Fund" which shall be administered by the commission acting through the department. The revolving fund may receive bond proceeds and funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source, public or private. The revolving fund shall be maintained in perpetuity for the purposes established in this section.

(2) There is established in the State Treasury a fund to be known as the "Water Pollution Control Hardship Grants Fund," which shall be administered by the commission acting through the department. The grants fund shall be maintained in perpetuity for the purposes established in this section. Any interest earned on monies in the grants fund shall be credited to that fund.

(3) The commission shall promulgate regulations for the administration of the revolving fund program, the hardship grants program and for related programs authorized under this section. The regulations shall be in accordance with the federal Water Quality Act of 1987, as amended, and regulations and guidance issued under that act. The commission may enter into capitalization grant agreements with the United States Environmental Protection Agency and may accept capitalization grant awards made under Title VI of the Water Quality Act of 1987, as amended.

(4) The commission shall establish a loan program which shall commence after October 1, 1988, to assist political subdivisions in the construction of water pollution control projects. Loans from the revolving fund may be made to political subdivisions as set forth in a loan agreement in amounts not exceeding one hundred percent (100%) of eligible project costs as established

by the commission. Notwithstanding loan amount limitations set forth in Section 49-17-61, the commission may require local participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund. The commission may establish a maximum amount for any loan in order to provide for broad and equitable participation in the program.

(5) The commission shall establish a hardship grants program for rural communities, which shall commence after July 1, 1997, to assist severely economically disadvantaged small rural political subdivisions in the construction of water pollution control projects. The commission may receive and administer state or federal funds, or both, appropriated for the operation of this grants program and may take all actions necessary to implement the program in accordance with the federal hardship grants program. The hardship grants program shall operate in conjunction with the revolving loan program administered under this section.

(6) The commission shall act for the state in all matters and with respect to all determinations under Title VI of the federal Water Quality Act of 1987, as amended, and the federal Omnibus Appropriations and Recision Act of 1996.

(7) Except as otherwise provided in this section, the revolving fund may be used only:

(a) To make loans on the condition that:

(i) The loans are made at or below market interest rates, at terms not to exceed the maximum time allowed by federal law after project completion; the interest rate and term may vary from time to time and from loan to loan at the discretion of the commission;

(ii) Periodic principal and interest payments will commence when required by the commission but not later than one (1) year after project completion and all loans will be fully amortized when required by the commission but not later than the maximum time allowed by federal law after project completion;

(iii) The recipient of a loan will establish a dedicated source of revenue for repayment of loans;

(b) To buy or refinance the debt obligation of political subdivisions at or below market rates, where the debt obligations were incurred after March 7, 1985, and where the projects were constructed in compliance with applicable federal and state regulations;

(c) To guarantee, or purchase insurance for, obligations of political subdivisions where the action would improve credit market access or reduce interest rates;

(d) To provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(e) To earn interest on fund accounts;

(f) To establish nonpoint source pollution control management programs;

(g) To establish estuary conservation and management programs;

(h) For the reasonable costs of administering the revolving fund and conducting activities under Sections 49-17-81 through 49-17-89, subject to the limitations established in Section 603(d)(7) of Title VI of the federal Clean Water Act, as amended, and subject to annual appropriation by the Legislature;

(i) In connection with the issuance, sale and purchase of bonds under Section 31-25-1 et seq., related to the funding of projects, to provide security or a pledge of revenues for the repayment of the bonds; and

(j) To pay the principal and interest on bonds issued pursuant to Section 11 of Chapter 580, Laws of 2007, Section 1 of Chapter 492, Laws of 2008, Section 47 of Chapter 557, Laws of 2009, Section 45 of Chapter 533, Laws of 2010, and Section 3 of Chapter 480, Laws of 2011, as they become due; however, only interest and investment earnings on money in the fund may be utilized for this purpose.

(8) The hardship grants program shall be used only to provide hardship grants consistent with the federal hardship grants program for rural communities, regulations and guidance issued by the United States Environmental Protection Agency, subsections (3) and (5) of this section and regulations promulgated and guidance issued by the commission under this section.

(9) The commission shall establish by regulation a system of priorities and a priority list of projects eligible for funding with loans from the revolving fund.

(10) The commission may provide a loan from the revolving fund only with respect to a project if that project is on the priority list established by the commission.

(11) The revolving fund shall be credited with all payments of principal and interest derived from the fund uses described in subsection (7) of this section. However, notwithstanding any other provision of law to the contrary, all or any portion of payments of principal and interest derived from the fund uses described in subsection (7) of this section may be designated or pledged for repayment of a loan as provided for in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(12) The commission may establish and collect fees to defray the reasonable costs of administering the revolving fund if it determines that the administrative costs will exceed the limitations established in Section 603(d)(7) of Title VI of the federal Clean Water Act, as amended. The administration fees may be included in loan amounts to political subdivisions for the purpose of facilitating payment to the commission. The fees may not exceed five percent (5%) of the loan amount.

(13) The commission may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to political subdivisions located in such counties; however, the interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Laws, 1988, ch. 534, § 3; Laws, 1991, ch. 535, § 1; Laws, 1991, ch. 578, § 6; Laws, 1997, ch. 416, § 1; Laws, 2002, ch. 490, § 17; Laws, 2004, ch. 570, § 3; Laws, 2006, ch. 545, § 4; Laws, 2007, ch. 580, § 12; Laws, 2008, ch. 492, § 2; Laws, 2009, ch. 557, § 48; Laws, 2010, ch. 533, § 46; Laws, 2011, ch. 480, § 4, eff from and after passage (approved Apr. 6, 2011.)

Amendment Notes — The 2010 amendment, in (7)(j), inserted "and Section 45 of Chapter 533, Laws of 2010" and made a related change.

The 2011 amendment inserted "and Section 3 of Chapter 480, Laws of 2011" following "Section 45 of Chapter 533, Laws of 2010" in (7)(j).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Commission on Environmental Quality, see §§ 49-2-5 and 49-2-9.

Water Pollution Abatement Loan Program, see § 49-17-61.

Federal Aspects — The Federal Clean Water Act, also known as the Federal Water Pollution Control Act or the Water Quality Act of 1987, see 33 USCS §§ 1251 et seq.

Section 603(d)(7) of Title VI of the Federal Clean Water Act, see 33 USCS § 1383.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 895.

§ 49-17-86. Water Pollution Control Emergency Loan Fund; short title.

(1)(a) There is created a fund in the State Treasury to be designated as the "Water Pollution Control Emergency Loan Fund" hereinafter referred to as "emergency fund."

(b) The emergency fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. The emergency fund shall be credited with all repayments of principal and interest derived from loans made from the emergency fund.

(c) The monies in the emergency fund may be expended only in amounts appropriated by the Legislature.

(d) The emergency fund shall be maintained in perpetuity for the purposes established in Sections 49-17-81 through 49-17-89. Unexpended amounts remaining in the emergency fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned on amounts in the emergency fund shall be deposited to the credit of the fund.

(2) The commission shall establish a loan program to assist political subdivisions in making emergency improvements such as repairs to or replacement of machinery, equipment, materials, structures or devices in existing water pollution abatement projects or such other emergency water pollution abatement projects as the commission deems necessary. Loans from the emergency fund may be made to political subdivisions as set forth in a loan agreement in amounts not exceeding one hundred percent (100%) of eligible project costs as established by the commission. The commission may require local participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the emergency fund. The commission

may establish a maximum amount for any loan not to exceed Three Hundred Fifty Thousand Dollars ($350,000.00).

(3) Except as otherwise provided in this section, the emergency fund may be used only:

(a) To make loans on the condition that:

(i) Loans are made at or below market interest rates, at terms not to exceed ten (10) years after project completion; the interest rate may vary from time to time and from loan to loan at the discretion of the commission.

(ii) Periodic principal and interest payments will commence when required by the commission but not later than one (1) year after project completion and all loans will be fully amortized when required by the commission but not later than ten (10) years after project completion.

(iii) The recipient of a loan shall establish a dedicated source of revenue for repayment of loans. In addition, the commission may require any loan recipient to impose a per connection surcharge on each customer for repayment of any loan funds provided under this section.

(iv) The recipient of the loan is not in arrears in repayments to the Water Pollution Control Revolving Fund, the Water Pollution Control Emergency Loan Fund or under the Water Pollution Abatement Loan Program.

(b) To provide financial assistance to political subdivisions in making emergency improvements such as repairs to or replacement of machinery, equipment, materials, structures or devices in existing water pollution abatement projects or such other emergency water pollution abatement projects as the commission deems necessary.

(c) To defray the reasonable costs of administering the emergency fund and conducting activities under this section, subject to annual appropriation by the Legislature.

(4) The commission shall establish a system of evaluating the eligibility of projects, including a determination of the emergency nature of a situation for which funding is sought.

(5) The fund will be credited with all payments of principal and interest derived from the fund uses described in subsection (3) of this section. However, notwithstanding any other provision of law to the contrary, all or any portion of payments of principal and interest derived from the fund uses described in subsection (3) of this section may be designated or pledged for repayment of a loan as provided for in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(6) In addition to any amounts allowed under subsection (3) (c), the commission may establish and collect fees to further defray the reasonable costs of administering the emergency fund. Any administrative fees may be included in loan amounts to political subdivisions for the purpose of facilitating payment to the commission; fees may not exceed five percent (5%) of the loan amount. The commission may also use administrative fees collected pursuant to Section 49-17-85 to defray the reasonable costs of administering the emergency fund.

(7) The board may, on a case-by-case basis, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to political subdivisions located in such counties; however, the interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Laws, 1996, ch. 455, § 1; Laws, 1999, ch. 454, § 17; Laws, 2000, ch. 442, § 1; Laws, 2004, ch. 570, § 4; Laws, 2006, ch. 545, § 5, eff from and after passage (approved Apr. 18, 2006.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a section reference and a typographical error in (1)(d). The words "this act" were changed to "Sections 49-17-81 through 49-17-89" and the word "amount" was changed to "amounts." The Joint Committee ratified the correction at its April 26, 2001 meeting.

§ 49-17-87. Pledge of moneys for repayment of loan; loan agreement and repayment schedule; audits; applicability of limitations on indebtedness.

(1) A political subdivision which receives a loan from the revolving fund or emergency fund is required to and authorized to pledge for the repayment of such loan (a) any part of the sales tax reimbursement to which it may be entitled under Section 27-65-75, and (b) any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, to meet a repayment schedule set forth in a loan agreement. The loan agreement shall provide for (i) monthly payments, (ii) semiannual payments or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). The loan agreement shall provide for the repayment of all funds received from the revolving fund within not more than twenty (20) years and repayment of all funds received from the emergency fund within not more than ten (10) years from the date of project completion. The State Tax Commission shall pay to the revolving fund or emergency fund monthly, or as often as is practicable, from the amount, which would otherwise be remitted to a political subdivision from its sales tax reimbursement or homestead exemption annual tax loss reimbursement, the amounts set forth in such loan agreement.

(2) Before any political subdivision shall receive any loan from the revolving fund or the emergency fund, it shall have executed with the State Tax Commission and the commission a loan agreement evidencing that loan. The loan agreement hereinabove provided for shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

(3) As determined by the commission, any political subdivision desiring to construct a project approved by the department and which receives a loan from the state for that purpose may be required to pledge as security for the

repayment of that loan, all or any part of the revenues of any project constructed, improved, repaired, replaced, purchased or refinanced with the proceeds of such loan. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of that system or combined system may be pledged to secure repayment of a loan as determined by the commission.

The loan agreement shall provide for periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). The repayment schedule shall provide for the repayment of all funds received from the revolving fund within no more than twenty (20) years and repayment of all funds received from the emergency fund within not more than ten (10) years from the date of project completion. Payments under the loan agreement shall be made prior to the payments of principal or interest on any bonds issued by the political subdivision in connection with the project or projects to which loans from the revolving fund or emergency fund are made.

The State Auditor, upon the request of the commission, shall audit the receipts and expenditures of each district whose monthly payments are to be received by the department, and if the State Auditor should find the political subdivision in arrears, the Auditor shall immediately begin withholding from funds due the taxing district in which the political subdivision is located, under Section 27-33-41, an amount equal to the payment due plus accrued interest, late charges and expenses incurred in the audit and issue a warrant for that amount to the revolving fund or emergency fund as directed below.

The loan agreement hereinabove provided for shall not be construed to prohibit any recipient from prepaying any part or all of the funds received.

(4) Loans or any bonds or other evidences of indebtedness which are incurred or issued either pursuant to this chapter or Section 31-25-1 et seq., in relation to this chapter, or pursuant to any other law as evidence of any loan made or indebtedness incurred pursuant to this chapter, shall not be deemed indebtedness within the meaning specified in Section 21-33-303, with regard to cities or incorporated towns, in Section 19-9-5, with regard to counties, and in any other state law establishing a similar indebtedness limitation with regard to political subdivisions other than cities, incorporated towns and counties.

SOURCES: Laws, 1988, ch. 534, § 4; Laws, 1991, ch. 578, § 7; Laws, 1994, ch. 418, § 5; Laws, 1996, ch. 455, § 4, eff from and after October 1, 1996.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

State Tax Commission, see §§ 27-3-1 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Bureau of Pollution Control, see § 49-2-7.

Water Pollution Control Emergency Loan Fund, see § 49-17-86.

Issuance of municipal securities pursuant to Water Pollution Control Revolving Fund Act, see § 49-17-89.

ATTORNEY GENERAL OPINIONS

The term "State Auditor" in Section 49-17-87 refers to and means the elected office of Auditor of Public Accounts established by Section 134 of the Mississippi Constitution of 1890, but the term "Auditor" refers to the state fiscal officer. Bryant, Dec. 28, 1999, A.G. Op. #99-0693.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 895.

§ 49-17-89. Borrowing of monies, issuance of securities, etc., by political subdivisions authorized; issuance of municipal securities; validation of securities; provisions of section supplemental.

(1) Political subdivisions are hereby authorized to borrow monies under the provisions of Sections 49-17-81 through 49-17-89, to issue municipal securities to evidence such loans, and to enter into such other agreements necessary for such loans and municipal securities on such terms and conditions as such political subdivisions shall deem necessary and advisable.

(2) In connection with the issuance of municipal securities by political subdivisions to evidence loans under the provisions of this chapter and as may be required by Section 31-25-1 et seq., the following provisions shall specifically apply:

(a) No notice of intent to issue municipal securities as may otherwise be required by state law shall be required.

(b) The governing body of the political subdivision shall adopt such resolutions as may be necessary to borrow monies under this chapter, to issue and sell municipal securities to evidence such loans, and to approve and authorize the execution of any agreements related thereto.

(c) Such loans and municipal securities shall be secured as provided for in Section 49-17-87.

(d) Such loans and municipal securities shall not be deemed general obligations.

(e) Such municipal securities shall be sold only to evidence the repayment of a loan under this chapter and may be sold at such price or prices, in such form, and subject to such terms and conditions of issue, redemption and maturity, rate of interest and time of payment of interest as otherwise provided for a loan under this chapter.

(f) A political subdivision may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with any loan and the issuance and sale of municipal securities under this chapter.

(g) Municipal securities issued under this chapter need not be validated as provided in Section 31-13-1 et seq.

(h) This section shall be deemed to provide an additional, alternate and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental to any provisions of any other laws and not in derogation of any such provisions. In connection with the issuance of municipal securities under this chapter, a political subdivision shall not be required to comply with the provisions of any other law except as provided herein.

SOURCES: Laws, 1991, ch. 578, § 8, eff from and after passage (approved April 12, 1991).

COUNTY AND MUNICIPAL BONDS FOR POLLUTION CONTROL

Sec.	
49-17-101.	Definitions.
49-17-103.	General powers of local governments.
49-17-105.	General provisions as to bonds.
49-17-107.	Securing payment of bonds.
49-17-108.	Refunding bonds.
49-17-109.	Contracts for facilities.
49-17-111.	Certain findings necessary preliminary to financing of facilities.
49-17-113.	Duties required of industries under agreements and lease/sales.
49-17-115.	Optional terms of lease/sale agreements.
49-17-117.	Application of bond proceeds; what costs of acquisition include.
49-17-119.	Exemption from state taxation.
49-17-121.	Governing board to petition for permission to issue bonds.
49-17-123.	Construction against participation under Chapter 471, Laws of 1971, or in state pollution appropriations.

§ 49-17-101. Definitions.

Whenever used in Sections 49-17-101 through 49-17-123, unless a different meaning clearly appears from the context, the following terms, whether used in the singular or plural, shall be given the following meanings:

(1) "Bonds" shall include notes, bonds and other obligations authorized to be issued under Sections 49-17-101 through 49-17-123.

(2) "Governing board" shall mean the governing bodies of the several counties and incorporated municipalities of the state as now or hereafter constituted; and in the event that any pollution control facilities shall be located in more than one (1) county, the term "governing board" shall also relate to the governing bodies of the several counties wherein such pollution control facilities shall be located.

(3) "Municipality" shall mean a county or incorporated municipality of this state.

(4) "Pollution control facilities" shall mean any facilities to be located in the municipality which are designed and used for the elimination, mitigation or prevention of air or water pollution, and shall include all facilities and

equipment designed and used to collect, treat and thereafter dispose of all effluents and waste of any sort originating in or about or resulting from conduct of any industrial enterprise. Pollution control facilities may include facilities designed both for water and air pollution. Pollution control facilities may be constructed as part of, and may include facilities also designed for the recovery of chemicals or to serve some other purpose, but which also contribute to the elimination, mitigation or prevention of air or water pollution. Pollution control facilities financed pursuant to Sections 49-17-101 through 49-17-123 by a county or an incorporated municipality shall not be a part of such county's or municipality's municipal water or sewer system.

(5) "Industry" shall mean any person, firm or corporation operating any enterprise or facility for the manufacturing, processing, generation, assembling, distributing, shipping or rendering of any type of energy, product, or public utility services from which operation conditions result which would, unless eliminated, mitigated or prevented, result in pollution of the atmosphere or waters situated in or abutting this state.

(6) "Pollution authority" shall mean the Mississippi Air and Water Pollution Control Commission as established by Sections 49-17-1 through 49-17-43, as the same may be amended from time to time.

(7) "Lease/sale" shall mean any agreement without limitation whereby a county or incorporated municipality shall lease and/or convey title to pollution control facilities to an industry, made by and between the governing board and such industry by which such industry agrees to pay to (and to secure if so required) the county or the incorporated municipality, as the case may be, or to any assignee thereof, the sums required to meet the payment of the principal, interest and redemption premium, if any, on any bonds, and/or the expenses, if any, of operation by such municipality or county.

(8) "Board" shall mean the Mississippi Agricultural and Industrial Board.

SOURCES: Laws, 1973, ch. 505, § 1, eff from and after passage (approved April 17, 1973).

Editor's Note — Section 49-17-7 provides that the words "Mississippi Air and Water Pollution Control Commission" wherever they may appear in the laws of the State of Mississippi shall be construed to mean the Mississippi Commission on Environmental Quality.

Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-103. General powers of local governments.

Upon compliance with procedures prescribed herein, and subject to the provisions hereinafter stated in Sections 49-17-105 through 49-17-123, any municipality is hereby authorized and empowered:

(a) To acquire, purchase, construct, operate, maintain and replace pollution control facilities;

(b) To enlarge, expand and improve existing pollution control facilities;

(c) To issue bonds for the purpose of defraying the cost of facilities contemplated by subsections (a) and (b) above;

(d) To enter into agreements with any industry situated in the municipality to construct, operate, maintain, repair and replace said facilities;

(e) To enter into a lease/sale with an industry for the lease and/or sale of such facilities to such industry;

(f) To accept any state or federal grant that may be available to defray any part of the cost of such facilities. Provided, however, the agreements contemplated by subsections (d) and (e) above shall contain terms and conditions under which the industry shall pay to the municipality, or trustee, if any, for the bonds contemplated by subsection (c) above, such sums of money and at such periods as will equal the aggregate of principal, interest and redemption premium, if any, due on the bonds and also the costs, if any, to the municipality of operating, maintaining, insuring, repairing and replacing such facilities, or portions thereof, including a reasonable amount for reserves. Provided, further, any agreement contemplated by subsection (e) above shall further contain terms and conditions pursuant to which the said facilities shall be conveyed to the industry.

SOURCES: Laws, 1973, ch. 505, § 2, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Provision that principal, interest, and redemption premium on bonds issued under §§ 49-17-101 to 49-17-123 shall be payable solely from revenue derived under agreements specified in subsections (d) and (e) of this section, see § 49-17-105.

§ 49-17-105. General provisions as to bonds.

All bonds issued by a municipality under authority of Sections 49-17-101 through 49-17-123 shall be limited obligations of such municipality. The principal, interest and redemption premium, if any, shall be payable solely out of the moneys to be derived by the municipality pursuant to the agreements specified in subsections (d) and (e) of Section 49-17-103. Bonds and interest coupons issued under authority of Sections 49-17-101 through 49-17-123 shall never constitute an indebtedness of such municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the municipality, or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty (40) years from their date, may be subject to such terms of redemption, may be payable at such place or places, may bear interest at such rate or rates as the governing board and the industry shall agree upon, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103; and may contain such other provisions not inconsistent herewith, as the municipality may determine, all of which shall be provided in the proceedings authorizing the bonds. Any bonds issued under the authority of Sections 49-17-101 through 49-17-123 may be sold at public or private sale at such price and in such manner and from time to time as may be determined by the governing board to be most advantageous, and the governing board may pay, as a part of the cost of acquiring any pollution control facility, and out of the bond proceeds, all expenses, premiums and commissions with the authorization, sale and issuance thereof. All bonds issued under the authority of Sections 49-17-101 through 49-17-123, except registered bonds which are registered otherwise than to bearer, and all interest coupons appurtenant thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance, in the future, of further bonds on a parity with those initially issued.

Bonds issued hereunder shall be validated in the chancery court in which the municipality is located.

SOURCES: Laws, 1973, ch. 505, § 3; Laws, 1985, ch. 477, § 6, eff from and after passage (approved April 8, 1985).

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-107. Securing payment of bonds.

The principal, interest and premium, if any, on any bonds shall be secured by a pledge of the revenues payable to the municipality, as the case may be, pursuant to either of the agreements specified in subsections (d) and (e) of Section 49-17-103 and may also, in the case of an agreement under subsection (e) of Section 49-17-103, be secured by a lien which may be subordinate to a prior lien on any other property given as security by the industry pursuant to the lease/sale and any bonds may be issued pursuant to and secured by a trust indenture. The proceedings under which bonds are authorized to be issued or any such trust indenture may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of the sums payable by the industry to the municipality and/or the trustee, if any, as the case may be, pursuant to the lease/sale, the maintenance and insurance of the pollution control facilities, the creation and maintenance of special funds by the industry, and the rights and remedies available in the event of default to the bondholders or to the trustee under such trust indenture, all as the governing board shall deem advisable. Provided, however, that in making any such agreements or provisions no municipality shall have the power to obligate itself except with respect to any security pledged, mortgaged or otherwise made available by the industry for the securing of the bonds, and the application of the revenues from the agreement, made under either subsections (d) or (e) of Section 49-17-103 and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any trust indenture securing such bonds may provide that in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or trust indenture, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon any municipality, or any charge upon its general credit or against its taxing power.

The trustee or trustees under any trust indenture, or any depository specified by such trust indenture, may be such persons or corporations as the governing board shall designate, notwithstanding that they may be nonresidents of Mississippi or incorporated under the laws of the United States or the laws of other states of the United States.

SOURCES: Laws, 1973, ch. 505, § 4, eff from and after passage (approved April 17, 1973).

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Authority for issuance of public utility improvement bonds, see § 21-27-23.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-108. Refunding bonds.

Any bonds issued under authority of Sections 49-17-101 through 49-17-123, and at any time outstanding, may, at any time and from time to time, be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing board may deem necessary, but not to exceed in the aggregate the sum of (a) the principal amount of the obligations to be refunded, (b) applicable redemption premiums thereon, (c) unpaid interest on such obligations to be refunded to the date of delivery or exchange of the refunding bonds, (d) in the event the proceeds from the sale of the refunding bonds are to be deposited in trust as hereinafter provided, interest to accrue on such obligations to be refunded from the date of delivery of the refunding bonds to the date of maturity of such obligations to be refunded, or to the first redemption date of such obligations to be refunded, whichever shall be earlier, and (e) expenses, premiums and commissions deemed by the governing board to be necessary in connection with the issuance of the refunding bonds.

Any such refunding may be effected whether the obligations to be refunded shall have then matured or shall thereafter mature, either by the exchange of the refunding bonds for the obligations to be refunded thereby or by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations to be refunded thereby, provided that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are, by their terms, subject to redemption, and regardless of whether or not the obligations to be refunded were issued in connection with the same projects or separate projects, and regardless of whether or not the obligations to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. Any refunding bonds issued under the authority of this section shall be payable from the revenues out of which the bonds to be refunded hereby were payable and shall be secured in accordance with the provisions of Section 49-17-107 and as authorized by this section.

The principal proceeds from the sale of any refunding bonds shall be applied to the payment of any expenses, premiums and commissions incurred in connection with such refunding and as follows:

(a) To the immediate payment and retirement of the obligations being refunded; or

(b) Deposited in trust to provide for the payment and retirement of the obligations being refunded, including the interest thereon, and to pay interest on the refunding bonds prior to the retirement of the obligations being refunded. Money in any such trust fund may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or obligations of any agency or instrumentality of the United States Government, or in certificates of deposit issued by a bank or trust company located in the State of Mississippi, if such certificates shall be secured by a pledge of any of said obligations having an aggregate market value equal to one hundred twenty percent (120%) of the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded, but which shall not have matured and which shall not be presently redeemable.

Prior to the issuance of refunding bonds under this section no findings shall be required of the pollution authority under Section 49-17-111. In lieu of the petition required by Section 49-17-121, the governing board shall file with the board a petition giving a brief explanation of the proposal to refund the obligations sought to be refunded, and financial statements on the company obligated under the lease/sale. Upon the filing of the petition, the board shall, as soon as practicable, approve the issuance of such refunding bonds, unless it determines that the issuance of such bonds would not be consistent with the purposes of Sections 49-17-101 through 49-17-123; and at any time not exceeding six (6) years following such approval the governing board may proceed with the issuance of such refunding bonds. The refunding bonds issued pursuant to this section shall be subject to all other terms and conditions of Sections 49-17-101 through 49-17-123, except for those provisions which, by their terms, do not apply to such refunding bonds.

It is the intent of the legislature that the terms used in this section shall have the meanings set forth in Section 49-17-101.

SOURCES: Laws, 1977, ch. 420, §§ 1, 2, eff from and after passage (approved March 30, 1977).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-109. Contracts for facilities.

Contracts for acquisition, purchase, construction and/or installation of facilities contemplated by Sections 49-17-101 through 49-17-123 shall be effected in the manner prescribed by law for public contracts; provided, however, where (a) the municipality finds and records such finding on its minutes, that because of availability or particular nature of such facilities, it would not be in the public interest or would less effectively achieve the purposes of Sections 49-17-101 through 49-17-123 to enter into such contracts upon the basis of public bidding pursuant to advertisement, (b) the industry concurs in such finding, and (c) such finding is approved by the board, public bidding pursuant to advertisement may be dispensed with and such contracts may be entered into based upon negotiation; and provided further, the industry at its option, may negotiate such contracts in the name of the municipality.

SOURCES: Laws, 1973, ch. 505, § 5, eff from and after passage (approved April 17, 1973).

Cross References — Public contracts generally, see §§ 31-1-1 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-111. Certain findings necessary preliminary to financing of facilities.

Prior to undertaking the financing of any pollution control facility, the governing board shall obtain a finding of the pollution authority that the pollution control facilities are necessary and that the design thereof will result in the elimination, mitigation and/or prevention of air or water pollution.

SOURCES: Laws, 1973, ch. 505, § 6, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-113. Duties required of industries under agreements and lease/sales.

Every agreement under either subsection (d) or (e) of Section 43-17-103 shall contain a covenant obligating the industry to effect the completion of the pollution control facilities if the proceeds of the bonds, including parity completion bonds, if any, prove insufficient, and each such lease/sale shall obligate the industry to make payments which shall be sufficient (a) to pay the principal of and interest on the bonds issued for such pollution control facilities, (b) to build up and maintain any reserves deemed by the governing board to be advisable in connection therewith, and (c) to pay the costs of maintaining the pollution control facilities in good repair and the cost of keeping it properly insured. Such agreement may provide for the issuance of additional parity bonds as required in order to complete the pollution control facility.

SOURCES: Laws, 1973, ch. 505, § 7, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-115. Optional terms of lease/sale agreements.

Any agreement made under subsection (e) of Section 49-17-103 may provide that the pollution control facilities will be owned by the municipality, and leased to the industry; may provide the industry with an option to purchase the pollution control facility upon such terms and conditions as the governing board and the industry shall agree upon at a price which may be a nominal amount or less than the true value at the time of purchase; or may provide that the pollution control facilities shall become the property of the industry upon the acquisition thereof. Any such agreement may also, but is not required to, include a guaranty agreement whereby a corporation, foreign or domestic, other than the industry guarantees in whole or in part the obligations of the industry under the lease/sale upon such terms and conditions as the governing board may deem appropriate.

SOURCES: Laws, 1973, ch. 505, § 8, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-117. Application of bond proceeds; what costs of acquisition include.

The proceeds from the sale of any bonds issued under authority of Sections 49-17-101 through 49-17-123 shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or interest on the bonds. The cost of acquiring any pollution control facilities shall be deemed to include the following: the actual cost of the construction of any part of any pollution control facilities which may be constructed, including architect's, engineer's and legal fees; the purchase price of any land necessary therefor; the purchase price of any part of any pollution control facilities that may be acquired by purchase; all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and the interest on the bonds for a reasonable time prior to construction, during construction, and for not exceeding one (1) year after completion of the construction.

SOURCES: Laws, 1973, ch. 505, § 9, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-119. Exemption from state taxation.

The bonds authorized by Sections 49-17-101 through 49-17-123 and the income therefrom, all trust indentures and mortgages executed as security therefor, all lease agreements made pursuant to the provisions hereof, and all pollution control facilities (when owned by the municipality) and the revenues derived from any agreement with respect thereto shall be exempt from all taxation by the State of Mississippi, and by any political subdivision thereof, except for inheritance, estate or transfer taxes and except further the contractors tax levied by Section 27-65-21, Mississippi Code of 1972.

SOURCES: Laws, 1973, ch. 505, § 10, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance allowing tax exemption for property use in pollution control. 65 A.L.R.3d 434.

§ 49-17-121. Governing board to petition for permission to issue bonds.

No bonds shall be issued pursuant to the provisions of Sections 49-17-101 through 49-17-123 until the proposal of the governing board to issue the bonds shall receive the approval of the board. Whenever the governing board shall propose to issue bonds pursuant to the provisions of said sections, it shall file its petition to the board setting forth: (a) a brief description of the pollution control facilities proposed to be undertaken; (b) a statement setting forth the action taken by the pollution control authority in connection with the pollution control facilities; (c) a reasonable estimate of the cost of the pollution control facilities; (d) a general summary of the terms and conditions of the lease/sale; and (e) financial statements on lessee company. Upon the filing of the petition the board shall, as soon as practicable, make such investigation as it deems advisable, and if it finds that the proposed pollution control facilities are intended to promote the purposes of Sections 49-17-101 through 49-17-123 and may be reasonably anticipated to effect such result, it shall be authorized to approve the pollution control facilities, and at any time not exceeding six (6) years following such approval, the governing board may proceed with the issuance of bonds for the pollution control facilities. Notice of the approval by the board shall be published at least once by the governing board in a newspaper having general circulation in the county where the pollution control facilities are to be located. The governing board shall thereupon adopt and publish as required by law a resolution declaring its intention to issue said bonds.

Any qualified elector may challenge the validity of such approval by intervention in the bond validation proceedings.

Authority hereby vested in any governing board to issue, and the board to approve, revenue bonds pursuant to and in accordance with Sections 49-17-101 through 49-17-123 is supplemental to, and may be exercised irrespective of Sections 27-39-15, 57-1-1 to 57-1-51, 57-1-71 to 57-1-83, 57-1-101 to 57-1-107, and 57-3-1 to 57-3-33, Mississippi Code of 1972.

SOURCES: Laws, 1973, ch. 505, § 11, eff from and after passage (approved April 17, 1973).

Editor's Note — Section 27-39-15, which is referred to in this section, was repealed by Laws, 1980, ch. 505, § 24 (as amended by Laws, 1981, 1st Ex Sess, ch. 5, § 1) eff September 30, 1982.

Cross References — Uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 49-17-123. Construction against participation under Chapter 471, Laws of 1971, or in state pollution appropriations.

Nothing in Sections 49-17-101 through 49-17-123 shall be construed as granting authority for participation under the provisions of Chapter 471, Laws of 1971, as now or hereafter amended or participation in state appropriations for pollution control purposes.

SOURCES: Laws, 1973, ch. 505, § 12, eff from and after passage (approved April 17, 1973).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

GULF COAST REGIONAL WASTEWATER MANAGEMENT COMMISSION [REPEALED]

SEC.
49-17-131 through 49-17-143. Repealed.

§§ 49-17-131 through 49-17-143. Repealed.

Repealed by Laws of 1979, ch. 437, § 8, eff. March 30, 1980.
§ 49-17-131. [En Laws, 1979, ch. 437, § 1]
§ 49-17-133. [En Laws, 1979, ch. 437, § 2]
§ 49-17-135. [En Laws, 1979, ch. 437, § 3]
§ 49-17-137. [En Laws, 1979, ch. 437, § 4]
§ 49-17-139. [En Laws, 1979, ch. 437, § 5]
§ 49-17-141. [En Laws, 1979, ch. 437, § 6]
§ 49-17-143. [En Laws, 1979, ch. 437, § 7]

Editor's Note — Former §§ 49-17-131 through 49-17-143 established the Gulf Coast Regional Wastewater Management Commission, to plan and design wastewater treatment facilities for certain Gulf Coast counties and municipalities therein, and provided for the appointment, organization and operation of the commission.

The provisions of Laws of 1979, ch. 437, codified as §§ 49-17-131 through 49-17-143, were, pursuant to § 8 of ch. 437, automatically repealed as of March 30, 1980, or at such time as a comprehensive wastewater management system for the area was developed. For provisions of the present comprehensive wastewater management system which became effective May 23, 1980, see §§ 49-17-301 et seq.

SOUTHERN REGIONAL WASTEWATER MANAGEMENT DISTRICT [REPEALED]

SEC.
49-17-161 through 49-17-209. [Repealed]

§§ 49-17-161 through 49-17-209. [Repealed].

Repealed by Laws of 2006, ch. 546, § 39, effective July 1, 2007.

§ 49-17-161. [Laws, 1980, ch. 519, § 1; Laws, 1993, ch. 321, § 2, eff from and after passage (approved March 12, 1993).]

§ 49-17-162. [Laws, 1993, ch. 321, § 1, eff from and after passage (approved March 12, 1993).]

§ 49-17-163. [Laws, 1980, ch. 519, § 2; Laws, 1993, ch. 321, § 3, eff from and after passage (approved March 12, 1993).]

§ 49-17-165. [Laws, 1980, ch. 519, § 3; Laws, 1993, ch. 321, § 4, eff from and after passage (approved March 12, 1993).]

§ 49-17-167. [Laws, 1980, ch. 519, § 4; Laws, 1993, ch. 321, § 5, eff from and after passage (approved March 12, 1993).]

§ 49-17-169. [Laws, 1980, ch. 519, § 5; Laws, 1993, ch. 321, § 6, eff from and after passage (approved March 12, 1993).]

§ 49-17-171. [Laws, 1980, ch. 519, § 6, eff from and after passage (approved May 20, 1980).]

§ 49-17-173. [Laws, 1980, ch. 519, § 7, eff from and after passage (approved May 20, 1980).]

§ 49-17-175. [Laws, 1980, ch. 519, § 8, eff from and after passage (approved May 20, 1980).]

§ 49-17-177. [Laws, 1980, ch. 519, § 9; Laws, 1993, ch. 321, § 7, eff from and after passage (approved March 12, 1993).]

§ 49-17-179. [Laws, 1980, ch. 519, § 10, eff from and after passage (approved May 20, 1980).]

§ 49-17-181. [Laws, 1980, ch. 519, § 11, eff from and after passage (approved May 20, 1980).]

§ 49-17-183. [Laws, 1980, ch. 519, § 12, eff from and after passage (approved May 20, 1980).]

§ 49-17-185. [Laws, 1980, ch. 519, § 13, eff from and after passage (approved May 20, 1980).]

§ 49-17-187. [Laws, 1980, ch. 519, § 14, eff from and after passage (approved May 20, 1980).]

§ 49-17-189. [Laws, 1980, ch. 519, § 15, eff from and after passage (approved May 20, 1980).]

§ 49-17-191. [Laws, 1980, ch. 519, § 16, eff from and after passage (approved May 20, 1980).]

§ 49-17-193. [Laws, 1980, ch. 519, § 17, eff from and after passage (approved May 20, 1980).]

§ 49-17-195. [Laws, 1980, ch. 519, § 18, eff from and after passage (approved May 20, 1980).]

§ 49-17-197. [Laws, 1980, ch. 519, § 19, eff from and after passage (approved May 20, 1980).]

§ 49-17-199. [Laws, 1980, ch. 519, § 20, eff from and after passage (approved May 20, 1980).]

§ 49-17-201. [Laws, 1980, ch. 519, § 21, eff from and after passage (approved May 20, 1980).]

§ 49-17-203. [Laws, 1980, ch. 519, § 22, eff from and after passage (approved May 20, 1980).]

§ 49-17-205. [Laws, 1980, ch. 519, § 23, eff from and after passage (approved May 20, 1980).]

§ 49-17-207. [Laws, 1980, ch. 519, § 24, eff from and after passage (approved May 20, 1980).]

§ 49-17-209. [Laws, 1980, ch. 519, § 25, eff from and after passage (approved May 20, 1980).]

Editor's Note — Former § 49-17-161 provided that Sections 49-17-161 through 49-17-209 shall be known and may be cited as the "Southern Regional Wastewater Management Act."

Former § 49-17-162 related to the name change from the Waveland Regional Wastewater Management District to the Southern Regional Wastewater Management District and the retention of powers and duties.

Former § 49-17-163 provided legislative findings and declaration of purpose.

Former § 49-17-165 provided definitions of terms used in Sections 49-17-161 through 49-17-209.

Former § 49-17-167 provided for the establishment of the Southern Regional Wastewater Management District.

Former § 49-17-169 related to the composition, officers and compensation of the board of directors.

Former § 49-17-171 provided the powers and duties of the district.

Former § 49-17-173 related to the power of the district to promulgate rules and regulations and the penalties for violations of the rules and regulations.

Former § 49-17-175 related to treatment facility contracts between the district and public agencies and their terms.

Former § 49-17-177 authorized public agencies other than a county to levy a special ad valorem tax upon all taxable property to finance contracts between public agencies and the district.

Former § 49-17-179 provided for public agency regulation of rates charged by collection or treatment facilities.

Former § 49-17-181 related to collection facility contracts between the district and public agencies and their terms.

Former § 49-17-183 related to special improvement assessments.

Former § 49-17-185 related to the issuance of bonds by the district.

Former § 49-17-187 provided for the issuance by the district of refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption.

Former § 49-17-189 related to the validation of bonds.

Former § 49-17-191 provided that bonds issued under the provisions of Sections 49-17-161 through 49-17-209 are not to be obligations of the state.

Former § 49-17-193 related to the powers of the district in connection with the issuance of bonds.

Former § 49-17-195 related to the appointment of a trustee to represent bondholders and the appointment of a receiver in the event that the trustee fails to protect and enforce the bondholders.

Former § 49-17-197 provided that the district was not required to pay any tax or assessment on property owned by the district under the provisions of Sections 49-17-161 through 49-17-209 or upon the income therefrom.

Former § 49-17-199 provided that bonds issued under the provisions of Sections 49-17-161 through 49-17-209 were legal investments and legal securities.

Former § 49-17-201 provided that any bonds of the district were made investment securities within the meaning of Article 8 of the Uniform Commercial Code.

Former § 49-17-203 related to the rights and remedies of bondholders.

Former § 49-17-205 related to the applicability of laws regarding acquisitions by competitive bids.

Former § 49-17-207 required an annual audit of district accounts.

Former § 49-17-209 provided that the provisions of Sections 49-17-161 through 49-17-209 were to be supplemental and controlling.

Laws of 2006, ch. 546, § 39, provides:

"SECTION 39. Sections 49-17-161, 49-17-162, 49-17-163, 49-17-165, 49-17-167, 49-17-169, 49-17-171, 49-17-173, 49-17-175, 49-17-177, 49-17-179, 49-17-181, 49-17-183, 49-17-185, 49-17-187, 49-17-189, 49-17-191, 49-17-193, 49-17-195, 49-17-197, 49-17-199, 49-17-201, 49-17-203, 49-17-205, 49-17-207 and 49-17-209, Mississippi Code of 1972, cited as the 'Southern Regional Wastewater Management Act,' which create and empower the Southern Regional Wastewater Management District, shall repeal on July 1, 2007."

Section 49-17-735 provides for the consolidation of the Southern Regional Wastewater Management District and the Hancock County Utility Authority into a single agency (known as the Hancock County Utility Authority), which is a continuance of the corporate existence of the Southern Regional Wastewater Management District.

Cross References — Solid wastes disposal by counties and municipalities, see §§ 17-17-1 et seq.

Metropolitan Area Waste Disposal Act, see §§ 21-27-161 et seq.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

Authority to adopt individual onsite wastewater disposal systems, see § 41-67-15.

Water Pollution Abatement Grant Program, see §§ 49-17-61 et seq.

RESEARCH REFERENCES

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 185-197, 218, 219, 529-531.

CJS. 39A C.J.S., Health & Environment §§ 102, 105, 130, 166 et seq.

93 C.J.S., Waters §§ 93-133.

94 C.J.S., Waters §§ 498-581.

MISSISSIPPI GULF COAST REGIONAL WASTEWATER AUTHORITY [REPEALED]

SEC.
49-17-301 through 49-17-353. Repealed

§§ 49-17-301 through 49-17-353. Repealed.

Repealed by Laws of 2006, ch. 546, § 40, effective July 1, 2007.

§ 49-17-301. [Laws, 1980, ch. 521, § 1, eff from and after passage (approved May 23, 1980).]

§ 49-17-303. [Laws, 1980, ch. 521, § 2; Laws, 1982, ch. 378, § 1, eff from and after passage (approved March 22, 1982).]

§ 49-17-305. [Laws, 1980, ch. 521, § 3, eff from and after passage (approved May 23, 1980).]

§ 49-17-307. [Laws, 1980, ch. 521, § 4, eff from and after passage (approved May 23, 1980).]

§ 49-17-309. [Laws, 1980, ch. 521, § 5; Laws, 1982, ch. 378, § 2, eff from and after passage (approved March 22, 1982).]

§ 49-17-311. [Laws, 1980, ch. 521, § 6; Laws, 1982, ch. 378, § 3, eff from and after passage (approved March 22, 1982).]

§ 49-17-313. [Laws, 1980, ch. 521, § 7, eff from and after passage (approved May 23, 1980).]

§ 49-17-315. [Laws, 1980, ch. 521, § 8, eff from and after passage (approved May 23, 1980).]

§ 49-17-317. [Laws, 1980, ch. 521, § 9, eff from and after passage (approved May 23, 1980).]

§ 49-17-319. [Laws, 1980, ch. 521, § 10, eff from and after passage (approved May 23, 1980).]

§ 49-17-321. [Laws, 1980, ch. 521, § 11, eff from and after passage (approved May 23, 1980).]

§ 49-17-323. [Laws, 1980, ch. 521, § 12, eff from and after passage (approved May 23, 1980).]

§ 49-17-325. [Laws, 1980, ch. 521, § 13; Laws, 1982, chs. 378, § 4; 434, § 24, eff from and after passage (approved April 3, 1982).]

§ 49-17-327. [Laws, 1980, ch. 521, § 14, eff from and after passage (approved May 23, 1980).]

§ 49-17-329. [Laws, 1980, ch. 521, § 15, eff from and after passage (approved May 23, 1980).]

§ 49-17-331. [Laws, 1980, ch. 521, § 16, eff from and after passage (approved May 23, 1980).]

§ 49-17-333. [Laws, 1980, ch. 521, § 17, eff from and after passage (approved May 23, 1980).]

§ 49-17-335. [Laws, 1980, ch. 521, § 18, eff from and after passage (approved May 23, 1980).]

§ 49-17-337. [Laws, 1980, ch. 521, § 19, eff from and after passage (approved May 23, 1980).]

§ 49-17-339. [Laws, 1980, ch. 521, § 20, eff from and after passage (approved May 23, 1980).]

§ 49-17-341. [Laws, 1980, ch. 521, § 21, eff from and after passage (approved May 23, 1980).]

§ 49-17-343. [Laws, 1980, ch. 521, § 22, eff from and after passage (approved May 23, 1980).]

§ 49-17-345. [Laws, 1980, ch. 521, § 23, eff from and after passage (approved May 23, 1980).]

§ 49-17-347. [Laws, 1980, ch. 521, § 24, eff from and after passage (approved May 23, 1980).]

§ 49-17-349. [Laws, 1980, ch. 521, § 25, eff from and after passage (approved May 23, 1980).]

§ 49-17-351. [Laws, 1980, ch. 521, § 26, eff from and after passage (approved May 23, 1980).]

§ 49-17-353. [Laws, 1980, ch. 521, § 27, eff from and after passage (approved May 23, 1980).]

Editor's Note — Former § 49-17-301 provided that Sections 49-17-301 through 49-17-353 shall be known and may be cited as the "Mississippi Gulf Coast Regional Wastewater Authority Act."

Former § 49-17-303 provided legislative findings and declaration of purpose.

Former § 49-17-305 provided definitions of terms used in Sections 49-17-301 through 49-17-353.

Former § 49-17-307 provided for the establishment of the Mississippi Gulf Coast Regional Wastewater Authority.

Former § 49-17-309 related to the selection, terms of office, officers and compensation of the board of commissioners.

Former § 49-17-311 related to the powers and duties of the authority.

Former § 49-17-313 related to the power of the authority to promulgate rules and regulations and the penalties for violations of the rules and regulations.

Former § 49-17-315 related to treatment facility contracts between the authority and public agencies and their terms.

Former § 49-17-317 authorized public agencies other than a county to levy a special ad valorem tax upon all taxable property to finance contracts between public agencies and the authority.

Former § 49-17-319 provided for public agency regulation of rates charged by collection or treatment facilities.

Former § 49-17-321 related to collection facility contracts between the authority and public agencies and their terms.

Former § 49-17-323 related to special improvement assessments.

Former § 49-17-325 related to the issuance of bonds by the authority.

Former § 49-17-327 provided for the issuance by the authority of refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption.

Former § 49-17-329 related to the validation of bonds.

Former § 49-17-331 provided that bonds issued under the provisions of Sections 49-17-301 through 49-17-353 are not to be obligations of the state.

Former § 49-17-333 related to the powers of the authority in connection with the issuance of bonds.

Former § 49-17-335 related to the appointment of a trustee to represent bondholders and the appointment of a receiver in the event that the trustee fails to protect and enforce the bondholders.

Former § 49-17-337 provided that the authority was not required to pay any tax or assessment on property owned by the authority under the provisions of Sections 49-17-301 through 49-17-353 or upon the income therefrom.

Former § 49-17-339 provided that bonds issued under the provisions of Sections 49-17-301 through 49-17-353 were legal investments and legal securities.

Former § 49-17-341 provided that any bonds of the authority were made investment securities within the meaning of Article 8 of the Uniform Commercial Code.

Former § 49-17-343 related to the rights and remedies of bondholders.

Former § 49-17-345 related to the applicability of laws regarding acquisitions by competitive bids.

Former § 49-17-347 required an annual audit of authority accounts.

Former § 49-17-349 provided that the provisions of Sections 49-17-301 through 49-17-353 were to be supplemental and controlling.

Former § 49-17-351 related to the severability of provisions.

Former § 49-17-353 provided that the provisions of Sections 49-17-301 through 49-17-353 were to be liberally interpreted.

Laws of 2006, ch. 546, § 40 provides:

"SECTION 40. Sections 49-17-301, 49-17-303, 49-17-305, 49-17-307, 49-17-309, 49-17-311, 49-17-313, 49-17-315, 49-17-317, 49-17-319, 49-17-321, 49-17-323, 49-17-325, 49-17-327, 49-17-329, 49-17-331, 49-17-333, 49-17-335, 49-17-337, 49-17-339, 49-17-341, 49-17-343, 49-17-345, 49-17-347, 49-17-349, 49-17-351 and 49-17-353, Mississippi Code of 1972, cited as the 'Mississippi Gulf Coast Regional Wastewater Authority Act,' which create and empower the Mississippi Gulf Coast Regional Wastewater Authority, shall repeal on July 1, 2007."

Section 49-17-731 provides for the consolidation of the Mississippi Gulf Coast Regional Wastewater Authority and the Jackson County Utility Authority into a single agency (known as the Jackson County Utility Authority), which is a continuance of the corporate existence of the Mississippi Gulf Coast Regional Wastewater Authority.

Cross References — Solid wastes disposal by counties and municipalities, see §§ 17-17-1 et seq.

Metropolitan Area Waste Disposal Act, see §§ 21-27-161 et seq.

Authority to adopt individual onsite wastewater disposal systems, see § 41-67-15.

Water Pollution Abatement Grant Program, see §§ 49-17-61 et seq.

Coastal Wetlands Protection Law, see §§ 49-27-1 et seq.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 676.

CJS. 39A C.J.S., Health & Environment §§ 102, 105, 130, 166 et seq.

93 C.J.S., Waters §§ 93-133.

94 C.J.S., Waters §§ 498-581.

Law Reviews. Milner & Waggoner, Overview of Major Federal Environmental Acts and Regulations for the General Practitioner. 60 Miss. L. J. 1, Spring, 1990.

MISSISSIPPI UNDERGROUND STORAGE TANK ACT OF 1988

SEC.
49-17-401. Short title.
49-17-403. Definitions.
49-17-405. Groundwater protection fund; duties of executive director; liability of tank owners; limitation on provisions of chapter and section.
49-17-407. Environmental protection fee on motor fuels; deposit of fees; limits on use of fund; third party claims.
49-17-409. Reports of contamination incidents; no recourse against tank owner; exceptions.
49-17-411. Compliance with regulations.
49-17-413. Rules and regulations.
49-17-415. Obligations of owners and operators of tanks; powers of commission or representatives.
49-17-417. Repealed.
49-17-419. Authority of commission to take timely and effective corrective action; use of funds from pollution emergency fund.
49-17-421. Tank regulatory fee.
49-17-423. Commission to administer funds from Leaking Underground Storage Tank Trust Fund.
49-17-425. Disclosure of records, reports, and information.
49-17-427. Proceedings before commission; penalties for violations of Sections 49-17-401 through 49-17-433; penalty consideration factors; limitations on liability.
49-17-429. Certification to install, alter or remove underground storage tanks.
49-17-431. Appeal rights.
49-17-433. Savings clause.
49-17-435. Annual report on status of underground storage tank program and groundwater protection trust fund.

§ 49-17-401. Short title.

Sections 49-17-401 through 49-17-433 shall be known as the Mississippi Underground Storage Tank Act of 1988.

SOURCES: Laws, 1988, ch. 547, § 1, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. Noncompliance.

Substantial evidence supported the environmental commission's finding that a corporation was not in compliance with the Mississippi Underground Storage Tank Act and the applicable regulations; the corporation was allowed a full opportunity to present its case and supporting evidence to the commission but it did not convince the commission that it had made a good faith effort to comply with the act and the regulations pursuant to Miss. Code Ann. § 49-17-403(q). Miss. Comm'n on Envtl. Quality v. Desai, 868 So. 2d 381 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Tort liability for pollution from underground storage tank. 5 A.L.R.5th 1.

State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

Milner & Waggoner, Overview of Major Federal Environmental Acts and Regulations for the General Practitioner. 60 Miss. L. J. 1, Spring, 1990.

§ 49-17-403. Definitions.

For the purposes of Sections 49-17-401 through 49-17-433, the following words and phrases shall have the meaning ascribed in this section:

(a) "Active site" means a site of an underground storage tank where an owner can be identified and where the tank is in use for management and handling of motor fuels.

(b) "Bonded distributor" means any person holding a distributor's permit issued under either Section 27-55-7 or Section 27-55-507.

(c) "Commission" means the Mississippi Commission on Environmental Quality.

(d) "Contamination" means the presence or discharge of regulated substances in or on the land or in the waters of the state.

(e) "Department" means the Mississippi Department of Environmental Quality.

(f) "Director" means the Executive Director of the Mississippi Department of Environmental Quality.

(g) "Groundwater" means water located beneath the land surface located wholly or partially within the boundaries of the state.

(h) "Motor fuels" means gasoline and aviation gasoline as defined in Section 27-55-5 and special fuel as defined in Section 27-55-505, except for those "motor fuels" used in electric power generating plants for the commercial production of electricity.

(i) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(j) "Owner of an underground storage tank" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

(ii) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

(k) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state municipality, commission, political subdivision of a state, any interstate body, a consortium, a joint venture, a commercial entity or the United States government.

(*l*) "Regulated substance" means:

(i) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law No. 96-510, as amended and extended (but not including any substance regulated as a hazardous waste under Section 17-17-1 et seq., Mississippi Code of 1972); and

(ii) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14-7⁄10) pounds per square inch absolute).

(m) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

(n) "Response action" means any activity, including evaluation, planning, design, engineering, construction and ancillary services, which is carried out in response to any discharge, release or threatened release of motor fuels.

(o) "Response action contractor" means a person who has been approved by the commission and is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(p) "Retailer" means any person other than a bonded distributor who sells motor fuel as defined in this section.

(q) "Substantial compliance" means that an owner or operator of an underground storage tank has registered that tank with the department, and has made a good-faith effort to comply with the law; and the rules and regulations adopted pursuant thereto.

(r) "Third-party claim" means any civil action brought or asserted by any person against any owner of any underground storage tank for damages to person or property which damages are the direct result of a release of motor fuels from an underground storage tank.

(s) "Underground storage tank" means any one or combination of containers including tanks, vessels, enclosures or structures together with appurtenances thereto used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. Such term does not include any:

(i) Farm or residential tanks of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tanks used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tanks;

(iv) Pipeline facilities (including gathering lines regulated under:

1. The Natural Gas Pipeline Safety Act of 1968, Public Law No. 90-481, 49 USC 1671-1684, as amended and extended,

2. The Hazardous Liquid Pipeline Safety Act of 1979, Public Law No. 96-129, 49 USC 2001 et seq., as amended and extended, or

3. An intrastate pipeline facility regulated under state laws comparable to the provisions of law in Clause 1 or 2 of this subparagraph);

(v) Surface impoundments, pits, ponds or lagoons;

(vi) Storm water or wastewater collection systems;

(vii) Flow-through process tanks;

(viii) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operation;

(ix) Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft or tunnel if the storage tank is situated upon or above the surface of the floor;

(x) Other tanks exempted by the Administrator of the federal Environmental Protection Agency; and

(xi) Piping connected to any of the above exemptions.

(t) "User" means any person who purchases or acquires motor fuels as defined in this section for consumption.

SOURCES: Laws, 1988, ch. 547, § 2; Laws, 1989, ch. 346, § 1; Laws, 1993, ch. 470, § 3; Laws, 1999, ch. 461, § 43, eff from and after July 1, 1999.

Editor's Note — Section 49-1-1 provides the word "director" shall mean and refer to the Executive Director of the Department of Wildlife, Fisheries and Parks.

Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

Laws, 1999, ch. 461, §§ 50, 51, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Federal Aspects — Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law No. 96-510 is codified as 42 USCS § 9601(14).

The Natural Gas Pipeline Safety Act of 1968, Public Law No. 90-481, 49 USCS §§ 1671 et seq.

The Hazardous Liquid Pipeline Safety Act of 1979, Public Law No. 96-129, 49 USCS § 2001 et seq.

JUDICIAL DECISIONS

1. Substantial compliance.

Substantial evidence supported the environmental commission's finding that a corporation was not in compliance with the Mississippi Underground Storage Tank Act and the applicable regulations; the corporation was allowed a full opportunity to present its case and supporting evidence to the commission but it did not convince the commission that it had made a good faith effort to comply with the act and the regulations pursuant to Miss. Code Ann. § 49-17-403(q). Miss. Comm'n on Envtl. Quality v. Desai, 868 So. 2d 381 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-405. Groundwater protection fund; duties of executive director; liability of tank owners; limitation on provisions of chapter and section.

(1) There is hereby created the Mississippi Groundwater Protection Trust Fund, hereinafter referred to as the "fund" to be administered by the Executive Director of the Department of Natural Resources. The commission shall adopt regulations for administering this fund. Whenever in the executive director's determination a release of motor fuels at an active site may pose a threat to the environment or the public health, safety or welfare, the department shall obligate monies available in the fund to provide for:

(a) Investigation and assessment of contamination sites;

(b) Restoration or replacement of potable water supplies;

(c) Rehabilitation of contamination sites, which may consist of cleanup of affected soil, groundwater and inland surface waters, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with the site selection and cleanup criteria established by the commission, except that nothing herein shall be construed to authorize the commission to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing underground storage tanks.

(2) Whenever the commission has expended funds from the fund created by Sections 49-17-401 through 49-17-433, the owner of the underground storage tank shall not be liable to the department for such costs if the owner was in substantial compliance on the date on which the discharge of the motor fuels which necessitates the cleanup was reported to the department. Otherwise owners are responsible for reimbursement and the reimbursed monies shall go back into the fund. In such circumstances the commission is authorized to take any necessary action to recover these monies from responsible owners.

(3) Any provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

SOURCES: Laws, 1988, ch. 547, § 3; Laws, 1995, ch. 627, § 7, eff from and after July 1, 1995.

Cross References — Deposit of the environmental protection fee on motor fuels into the groundwater protection fund established in this section and the limits on the use of such funds, see § 49-17-407.

Authority of commission to determine that tank owner is not in compliance with this section if owner fails to pay regulatory fees for more than three months, see § 49-17-409.

JUDICIAL DECISIONS

1. Reimbursement.

Substantial evidence supported the environmental commission's finding that a corporation was not in compliance with Mississippi Underground Storage Tank Act, and the applicable regulations; therefore the corporation was not entitled to reimbursement for costs incurred in replacing its underground storage tanks. Miss. Comm'n on Envtl. Quality v. Desai, 868 So. 2d 381 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Tort liability for pollution from underground storage tank. 5 A.L.R.5th 1.

State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

Am Jur. 12A Am. Jur. Pl & Pr Forms (Rev), Fraud and Deceit, Form 142.1 (complaint, petition or declaration-for damages-misrepresentation as to condition of underground gasoline storage system and soil surrounding system).

12A Am. Jur. Pl & Pr Forms (Rev), Garages and Filling and Parking Stations, Form 2.1 (complaint, petition or declaration-for damages incurred by filling station purchaser to repair leaks in and contamination caused by underground gasoline storage system-against former filling station owner).

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 69.1 (complaint, petition or declaration-by purchaser of gasoline station-for costs to repair leaks in underground gasoline tank storage system and to replace gasoline-contaminated soil-against former gasoline station owner).

§ 49-17-407. Environmental protection fee on motor fuels; deposit of fees; limits on use of fund; third party claims.

(1)(a) An environmental protection fee of Four-tenths of One Cent (4⁄10 of 1¢) per gallon is hereby levied upon any bonded distributor, as defined by Sections 49-17-401 through 49-17-433, who sells or delivers motor fuels to a retailer or user in this state.

(b) Every person, other than a bonded distributor, who shall purchase or acquire motor fuels within this state on which the environmental protection fee has not accrued, shall be liable for the environmental protection fee.

(c) The environmental protection fee shall be imposed only one (1) time on motor fuels sold in the state.

(d) The environmental protection fee shall be collected by the State Tax Commission and shall be designated separately from the excise taxes on fuels.

(e) Any person liable for the environmental protection fee shall be subject to the same requirements and penalties as distributors under the provisions of the Mississippi Special Fuel Tax Law.

(f) Any person liable for the environmental protection fee shall file a report and remit any fees due at the same time provided for filing reports under Section 27-55-523, on forms prescribed by the State Tax Commission.

(g) The State Tax Commission is hereby authorized and empowered to promulgate all rules and regulations necessary for the administration of the environmental protection fee.

(2)(a) On or before the fifteenth day of each month the environmental protection fees collected during the previous month shall be deposited into the Mississippi Groundwater Protection Trust Fund established in Section 49-17-405. When the unobligated balance in the fund reaches or exceeds Ten Million Dollars ($10,000,000.00), the administrator of the fund shall notify in writing the State Tax Commission no later than the twenty-fifth day of the month to abate the environmental protection fee. The abatement shall become effective on the last day of the month succeeding the month in which such notice was given. All environmental protection fees accrued shall be reported and paid.

(b) When the fund balance is reduced below Six Million Dollars ($6,000,000.00), the fee shall again be imposed at the rate of Four-tenths of One Cent (4⁄10 of 1¢) per gallon until such time as the fund shall reach or exceed Ten Million Dollars ($10,000,000.00). The administrator of the fund shall notify, no later than the twenty-fifth day of the month, the State Tax Commission to reimpose the environmental protection fee. The imposition of the fee shall become effective on the first day of the second month succeeding the month in which the notice to reimpose the fee was given.

(3) This fund shall be used for the purposes set forth in Sections 49-17-401 through 49-17-435 and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government;

it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate. Any interest earned on monies in this fund shall remain in this fund.

(4) Monies held in the fund established under Sections 49-17-401 through 49-17-435 shall be used only at an active site and shall be disbursed in accordance with the commission requirements and as follows:

(a) Payments shall be made to any third party who brings a third-party claim against any owner of an underground storage tank and the commission as trustee of the Mississippi Groundwater Protection Trust Fund and who obtains a final judgment in such action which is valid and enforceable in this state against such parties. Payment shall be paid to the third party upon filing by such party an application with the department attaching the original or a certified copy of the final judgment.

(b) Payments shall be made in reasonable amounts to approved response action contractors and other parties involved in the site study and cleanup. Payment shall be made to the party incurring the costs by filing of a sworn application with the department indicating the fair and reasonable value of the costs of site rehabilitation, subject to the regulations and limitations as set by the department.

(5) Payments from the fund are limited as follows:

(a) For cleanup purposes, a maximum of One Million Five Hundred Thousand Dollars ($1,500,000.00) may be disbursed from the fund for any one (1) site, per confirmed release occurrence.

(b) For third-party judgments, a maximum of One Million Dollars ($1,000,000.00) may be disbursed from the fund for any one (1) site, per confirmed release occurrence.

(c) Nothing in Sections 49-17-401 through 49-17-435 shall establish or create any liability or responsibility on the part of the department or the State of Mississippi to pay any cleanup costs or third-party claims if the fund created herein is insufficient to do so.

(6) Monies held in the fund established under Sections 49-17-401 through 49-17-435 shall not be used for purchases of equipment needed to assist in cleanup operations.

(7) Nothing in Sections 49-17-401 through 49-17-435 shall serve to limit any recovery against an owner of an underground storage tank in excess of the fund payment limits established under this section.

(8) Substantial compliance shall in no way be construed to be an absolute defense to civil liability.

SOURCES: Laws, 1988, ch. 547, § 4; Laws, 1990, ch. 512, § 1; Laws, 1992, ch. 397, § 1; Laws, 1993, ch. 470, § 1; Laws, 1995, ch. 404, § 1; Laws, 1999, ch. 385, § 1; Laws, 1999, ch. 461, § 44; Laws, 2009, ch. 429, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 385, Laws of 1999, effective from and after June 30, 1999, amended this section. Section 44 of ch. 461, Laws of 1999, effective from and after July 1, 1999, also amended this section. As set out above, this section reflects the language of Section 44 of ch. 461, Laws of 1999, pursuant to Section

1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Laws of 1999, ch. 461, §§ 50, 51, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Mississippi Special Fuel Tax Law, see §§ 27-55-501 et seq.

Expenditure of trust funds without recourse to reimbursement or recovery from any underground storage tank owner, see § 49-17-409.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

Application of statute of limitations in private tort actions based on injury to persons or property caused by underground flow of contaminants. 11 A.L.R.5th 438.

§ 49-17-409. Reports of contamination incidents; no recourse against tank owner; exceptions.

The commission is authorized to establish requirements for the written reporting of motor fuel contamination incidents from underground storage tanks. All sites involving incidents of motor fuel contamination from underground storage tanks, where the owner of such tanks is in substantial compliance and files a written report with the commission of such incident, shall be qualified sites for the expenditure of funds from the Mississippi Groundwater Protection Trust Fund created by Sections 49-17-401 through 49-17-433. Any funds so expended shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery from any underground storage tank owner, subject to the following exceptions:

(a) The provisions of this section shall not apply to any site where the department has initiated any cleanup or civil enforcement action prior to the passage of Sections 49-17-401 through 49-17-433.

(b) The provisions of this section shall not apply to any site where the department has been denied site access to implement the provisions of Sections 49-17-401 through 49-17-433.

(c) The provisions of this section shall not be construed to authorize or require reimbursement from the fund for costs expended prior to the passage of Sections 49-17-401 through 49-17-433.

(d) The commission may determine, in its discretion, that the owner of an underground storage tank is not in substantial compliance for the purposes of this section and Section 49-17-405, if such owner of an underground storage tank has been delinquent in the payment of tank regulatory fees for more than three (3) months after such fee is due and payable.

(e) Any provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

SOURCES: Laws, 1988, ch. 547, § 5; Laws, 1990, ch. 512, § 2; Laws, 1992, ch. 397, § 2; Laws, 1995, ch. 627, § 8, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. Substantial compliance.

Substantial evidence supported the environmental commission's finding that a corporation was not in compliance with the Mississippi Underground Storage Tank Act and the applicable regulations; therefore the corporation was not entitled to reimbursement for costs incurred in replacing its underground storage tanks. Miss. Comm'n on Envtl. Quality v. Desai, 868 So. 2d 381 (Miss. Ct. App. 2004).

ATTORNEY GENERAL OPINIONS

The 1990 amendment to this section did not change the grace period to include releases of motor fuels reported to the Department of Environmental Quality prior to May 18, 1988. Barlow, June 4, 1999, A.G. Op. #99-0235.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-411. Compliance with regulations.

No person shall own, install or operate an underground storage tank without complying with the applicable regulations of the commission.

SOURCES: Laws, 1988, ch. 547, § 6, eff from and after July 1, 1988.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-413. Rules and regulations.

(1) The commission shall promulgate rules and regulations governing underground storage tanks, which shall include, but not be limited to:

(a) Notification of abandoned underground storage tanks;

(b) Registration of underground storage tanks currently under operation;

(c) Standards for underground storage tanks. The commission shall distinguish in such standards between requirements appropriate for new tanks, for tanks in existence on the date of the promulgation of the standards and for abandoned tanks. These standards shall include, but not be limited to, design, construction, installation, release detection, and compatibility standards;

(d) Release detection, prevention and corrective action;

(e) Tank closure requirements;

(f) Standards for monitoring, testing, reporting and record keeping;

(g) Requirements for financial responsibility. The commission shall adopt requirements to insure financial responsibility for corrective action and compensation of third parties required by releases arising from the operation of an underground storage tank, except that such requirements shall not exceed those established by the United States Environmental Protection Agency (EPA). Financial responsibility may be established by any one (1) or combination of the following: insurance; guarantee; surety bond; letter of credit; qualification as a self-insurer; for owners of underground storage tanks containing motor fuels, use of the Mississippi Groundwater Protection Trust Fund; or any other financial assurance mechanism which shall be allowed under EPA regulations governing underground storage tanks; and

(h) Requirements to implement the National Energy Policy Act of 2005 (EPACT), 42 USC 15801.

(2) Variances and temporary emergency variances may be granted by the commission from any regulation adopted pursuant to Section 49-17-401 et seq.

SOURCES: Laws, 1988, ch. 547, § 7; Laws, 2008, ch. 308, § 1, eff from and after passage (approved Mar. 17, 2008.)

JUDICIAL DECISIONS

1. Noncompliance.

Substantial evidence supported the environmental commission's finding that a corporation was not in compliance with the Mississippi Underground Storage Tank Act and the applicable regulations; therefore the corporation was not entitled to reimbursement for costs incurred in replacing its underground storage tanks. Miss. Comm'n on Envtl. Quality v. Desai, 868 So. 2d 381 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-415. Obligations of owners and operators of tanks; powers of commission or representatives.

For the purposes of identifying the source of known or suspected pollution, developing or assisting in the development of any regulation, conducting any study, taking corrective action or enforcing the provisions of Sections 49-17-401 through 49-17-433, any owner or operator of an underground storage tank shall, upon the request of any duly authorized representative of the commission: furnish information relating to such tanks, including tank equipment and contents; conduct monitoring or testing; and permit the designated representative at all reasonable times to have access to and to copy all records relating to such tanks. For the purposes of identifying the source of known or suspected pollution, developing or assisting in the development of any regulation, conducting any study, or enforcing the provisions of Sections 49-17-401 et seq., any duly authorized representatives of the commission are authorized:

(a) To enter at reasonable times any establishment or place where an underground storage tank is located;

(b) To inspect and obtain samples from any person of any regulated substances contained in such tank; and

(c) To conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or groundwater.

SOURCES: Laws, 1988, ch. 547, § 8, eff from and after July 1, 1988.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 149.

§ 49-17-417. Repealed.

Repealed by its own terms by Laws, 1988, ch. 547, § 9, eff from and after July 1, 1994.

[Laws, 1988, ch. 547, § 9]

Editor's Note — Former § 49-17-417 related to the Groundwater Protection Advisory Committee.

§ 49-17-419. Authority of commission to take timely and effective corrective action; use of funds from pollution emergency fund.

Nothing contained in the Mississippi Underground Storage Tanks Act of 1988 (Sections 49-17-401 through 49-17-433) shall prevent the commission from requiring any owner of an underground storage tank from taking timely and effective corrective action.

The commission may use the Pollution Emergency Fund for emergency or remedial cleanup of underground storage tank leaks when the tank owner will not take timely and effective action. In the event of the necessity for such immediate remedial or cleanup action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission from the tank owner.

SOURCES: Laws, 1988, ch. 547, § 10, eff from and after July 1, 1988.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

Application of requirement in § 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607(a)) that private cost-recovery actions be consistent with national contingency plan. 107 A.L.R. Fed. 562.

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 149.

§ 49-17-421. Tank regulatory fee.

The commission may assess and collect a tank regulatory fee in an amount sufficient to administer Sections 49-17-401 through 49-17-435 but not to exceed One Hundred Dollars ($100.00) per tank per year from the owner of each underground storage tank in use in Mississippi on July 1, 1988, or brought into use after that date, as provided in the Mississippi Underground Storage Tank Act of 1988 (Sections 49-17-401 through 49-17-435). The tank regulatory fee assessed under this section is a debt due by the owner of each underground storage tank in use in Mississippi on July 1, 1988, or brought into use after that date. The tank regulatory fee shall be due July 1 of each year. If any part of the tank regulatory fee is not paid within thirty (30) days after the due date, a penalty of fifty percent (50%) of the amount due shall accrue at once and be added to the fee, unless the owner of the underground storage tank demonstrates to the commission that the failure to make timely payment was unavoidable due to financial hardship or otherwise beyond the control of the owner. Monies collected under this section shall be deposited in a special fund which is created in the State Treasury. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the General Fund and any interest earned on amounts in the special fund shall be credited to the special fund by the Treasurer. The fund may receive monies from any available public or private source, including but not limited to, collection of fees, interest, grants, taxes, public or private donations and judicial actions. Monies in this special fund shall be expended by annual appropriation approved by the Legislature to administer Sections 49-17-401 through 49-17-435.

SOURCES: Laws, 1988, ch. 547, § 11; Laws, 1993, ch. 470, § 2; Laws, 1996, ch. 334, § 1, eff from and after July 1, 1996.

§ 49-17-423. Commission to administer funds from Leaking Underground Storage Tank Trust Fund.

The commission shall administer the expenditure of any funds made available from the Leaking Underground Storage Tank Trust Fund established by the Federal Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, October 17, 1986, Public Law No. 99-563, October 27, 1986, 42 USCS Sections 9671-9675, and shall have authority to promulgate any rules and regulations necessary to administer this program.

SOURCES: Laws, 1988, ch. 547, § 12, eff from and after July 1, 1988.

Federal Aspects — Federal Superfund Amendments and Reauthorization Act of 1986, 42 USCS §§ 9671-9675.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-425. Disclosure of records, reports, and information.

The disclosure of any records, reports or information obtained pursuant to Sections 49-17-401 et seq. shall be governed by the Mississippi Public Records Act of 1983, Section 25-61-1 and Section 49-17-39, Mississippi Code of 1972, and the regulations of the commission promulgated thereunder.

SOURCES: Laws, 1988, ch. 547, § 13, eff from and after July 1, 1988.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 149.

§ 49-17-427. Proceedings before commission; penalties for violations of Sections 49-17-401 through 49-17-433; penalty consideration factors; limitations on liability.

(1) Whenever the commission or an employee thereof has reason to believe that a violation of any provision of this chapter, or of any order of the commission, or of any regulation promulgated pursuant to this chapter has

occurred, the commission shall initiate proceedings in the same manner as provided in Sections 49-17-31 through 49-17-41, Mississippi Code of 1972.

(2) Any person found by the commission violating any of the provisions of Sections 49-17-401 through 49-17-433, or any rule or regulation or written order of the commission shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00) for each violation per day, such penalty to be assessed and levied by the commission as provided in Sections 49-17-1 through 49-17-43, Mississippi Code of 1972.

(3) In determining the amount of any penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;

(b) Any damage to air, water, land or other natural resources of the state or their uses;

(c) Costs of restoration or abatement;

(d) Economic benefit as a result of noncompliance;

(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public;

(f) Past performance history; and

(g) Whether the noncompliance was discovered and reported as the result of a voluntary self-evaluation. If a person discovers as a result of a voluntary self-evaluation, information related to noncompliance with an environmental law and voluntarily discloses that information to the department, commission or any employee thereof, the commission shall, to the greatest extent possible, reduce a penalty, if any, determined by the commission, except for economic benefit as a result of noncompliance, to a de minimis amount if all of the following are true:

(i) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person;

(ii) The person making the disclosure initiates the appropriate corrective actions and pursues those corrective actions with due diligence;

(iii) The person making the disclosure cooperates with the commission and the department regarding investigation of the issues identified in the disclosure;

(iv) The person is not otherwise required by an environmental law to make the disclosure to the commission or the department;

(v) The information was not obtained through any source independent of the voluntary self-evaluation or by the department through observation, sampling or monitoring;

(vi) The noncompliance did not result in a substantial endangerment threatening the public health, safety or welfare or the environment; and

(vii) The noncompliance is not a repeat violation occurring at the same facility within a period of three (3) years. "Repeat violation" in this subparagraph means a second or subsequent violation, after the first violation has ceased, of the same statutory provision, regulation, permit condition, or condition in an order of the commission.

(4) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazard-

ous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted thereto.

SOURCES: Laws, 1988, ch. 547, § 14; Laws, 1995, ch. 627, § 9; Laws, 2003, ch. 301, § 3, eff from and after passage (approved Jan. 20, 2003.)

ATTORNEY GENERAL OPINIONS

The language in subsection (g)(vi) concerning substantial endangerment includes serious harm to the public health, safety, or welfare or to the environment equivalent to the substantial endangerment language in Section 7003 of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.S. § 7003. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

Subsection (g)(vi) restricts only the Commission's prosecutorial authority and, therefore, penalties levied by the court are not restricted and the court can impose criminal or civil penalties otherwise provided by law in the prosecution of environmental criminal actions. Chisolm, Sept. 19, 2001, A.G. Op. #01-0486.

RESEARCH REFERENCES

ALR. State and local government control of pollution from underground storage tanks. 11 A.L.R.5th 388.

§ 49-17-429. Certification to install, alter or remove underground storage tanks.

No person may install, alter or remove an underground storage tank after July 1, 1990, without first having been certified by the Commission on Natural Resources. The commission shall adopt rules and regulations setting forth the requirements for such certification which shall include but not be limited to a certification examination.

SOURCES: Laws, 1988, ch. 547, § 15, eff from and after July 1, 1988.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 149.

§ 49-17-431. Appeal rights.

Any person aggrieved by any decision by the commission or the director relating to any provision of Sections 49-17-401 through 49-17-433 shall have the right to appeal as provided in Section 49-17-41, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 547, § 16, eff from and after July 1, 1988.

§ 49-17-433. Savings clause.

The provisions of Sections 49-17-401 through 49-17-433 are severable. If any part of Sections 49-17-401 through 49-17-433 is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

SOURCES: Laws, 1988, ch. 547, § 17, eff from and after July 1, 1988.

§ 49-17-435. Annual report on status of underground storage tank program and groundwater protection trust fund.

Before November 15 of each year, the department shall report to the appropriate environmental committees of the Senate and House of Representatives on the status of the Underground Storage Tank Program and the Groundwater Protection Trust Fund. The report shall include at a minimum any recommendations for improvement of the program and for ensuring the soundness of the fund and, to the extent practicable, an assessment of any changes in the retail price of motor fuels caused by the environmental protection fee.

SOURCES: Laws, 1993, ch. 470, § 4; Laws, 1995, ch. 404, § 2, eff from and after July 1, 1995.

LEAD-BASED PAINT ACTIVITY ACCREDITATION AND CERTIFICATION ACT

Sec.
49-17-501. Short title.
49-17-503. Purpose.
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49-17-509. Authority of commission; applicability of Sections 49-17-501 through 49-17-531.
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49-17-521. Lead-based paint certified firm certificate required; certificates to indicate whether firm is certified for renovations or abatements or both.
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49-17-525. Creation of Lead-Based Paint Program Operations Fund; fees.
49-17-527. Prohibitions under chapter.
49-17-529. Penalties; reprimands; suspension and revocation of certificates; procedure; deposit of collected monies.
49-17-531. Authority of commission to establish reciprocity requirements.

§ 49-17-501. Short title.

Sections 49-17-501 through 49-17-531 shall be known as and may be cited as the "Lead-Based Paint Activity Accreditation and Certification Act."

SOURCES: Laws, 1997, ch. 390, § 1, eff from and after July 1, 1997.

§ 49-17-503. Purpose.

The purpose of Sections 49-17-501 through 49-17-531 is to provide for the accreditation of lead-based paint activities training programs, procedures and requirements for certification of persons engaged in lead-based paint activities and development and implementation of work practice standards for lead-based paint activities in target housing, child-occupied facilities and other facilities regulated under Section 402 of the federal Toxic Substances Control Act. It is the intent of Sections 49-17-501 through 49-17-531 that the cost of the administration and enforcement of Sections 49-17-501 through 49-17-531 shall be borne fully by federal grants and fees for accreditation, certification, renovation projects and abatement projects.

SOURCES: Laws, 1997, ch. 390, § 2; Laws, 2009, ch. 427, § 1, eff from and after passage (approved Mar. 23, 2009.)

Federal Aspects — Section 402 of the Toxic Substances Control Act, see 15 USCS § 2682.

§ 49-17-505. Definitions.

For purposes of Sections 49-17-501 through 49-17-531, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

(a) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards consistent with 745 CFR Section 223. The term includes, but is not limited to, the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil and all preparation, cleanup, disposal, and postabatement clearance testing activities associated with those measures. The term does not include renovation, remodeling, landscaping or other activities not designed to permanently eliminate lead-based paint hazards and interim controls, operations and maintenance activities or other activities and measures designed to temporarily, but not permanently reduce lead-based paint hazards.

(b) "Accredited training program" means a training program that has been accredited by the commission, United States Environmental Protection Agency (EPA) or EPA-approved lead-based paint program in a state with reciprocity agreements with Mississippi to provide training for individuals engaged in lead-based paint activities.

(c) "Certificate" means a document authorizing a person to perform lead-based paint activities as described in Sections 49-17-501 through 49-17-531.

(d) "Child-occupied facility," as this term applies to abatement activities, means a building, or portion of a building, constructed before 1978, visited regularly by the same child, six (6) years of age or under, on at least two (2) different days within any calendar week, if each day's visit lasts at least three (3) hours, the combined weekly visit lasts at least six (6) hours, and the combined annual visits last at least sixty (60) hours. Child-occupied facilities include, but are not limited to, day care centers, preschools and kindergarten classrooms.

(e) "Child-occupied facility," as this term applies to renovation activities, means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under six (6) years of age, on at least two (2) different days within any week, if each day's visit lasts at least three (3) hours and the combined weekly visits last at least six (6) hours, and the combined annual visits last at least sixty (60) hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six (6), such as restrooms and cafeterias. Common areas that children under age six (6) only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six (6).

(f) "Clearance levels" means the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(g) "Commission" means the Mississippi Commission on Environmental Quality.

(h) "Department" means the Mississippi Department of Environmental Quality.

(i) "Dust sampling technician" means an individual employed to perform dust clearance sampling.

(j) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(k) "Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business that performs or offers to perform lead-based paint activities. This term also includes a federal, state, tribal, or local government agency, or a nonprofit organization that performs or offers to perform lead-based paint activities.

(*l*) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(m) "Inspector" means an individual employed to inspect or reinspect for the presence of lead-based paint, to collect samples for the presence of lead in dust and soil for the purposes of abatement or renovation clearance testing and to prepare inspection reports.

(n) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one (1) milligram per square centimeter or more than one-half of one percent (0.5%) by weight.

(o) "Lead-based paint activities" means inspection, risk assessment, abatement or renovation of target housing or child-occupied facilities.

(p) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the United States Environmental Protection Agency.

(q) "Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six (6) square feet or less of painted surface per room for interior activities or twenty (20) square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 CFR Section 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same thirty (30) days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

(r) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, firm, association, independent contractor or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.

(s) "Project designer" means an individual employed to prepare abatement project designs, occupant protection plans and abatement project reports.

(t) "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term 'renovation' includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity, sanding, scraping or other activities that may generate paint dust); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather-stripping);

and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term renovation does not include minor repair and maintenance activities.

(u) "Renovator" means an individual who either performs or directs or supervises workers who perform renovations. A "certified renovator' is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized state or tribal program, and has been certified to perform renovations in the State of Mississippi.

(v) "Residential dwelling" means a detached single family dwelling unit, including attached structures such as porches and stoops or a single family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(w) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards and the provision of a report by the person conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(x) "Risk assessor" means an individual employed to conduct risk assessments and lead hazard screens, to prepare inspection reports and to collect samples for the presence of lead in dust and soil for the purposes of abatement and renovation clearance testing.

(y) "Supervisor" means an individual designated by a contractor or certified firm to be responsible for the direction and conduct of lead-based paint abatement activities and to prepare occupant protection plans and abatement reports.

(z) "Target housing," as this term refers to abatements, means any housing constructed before 1978, except housing for the elderly or persons with disabilities [unless any one or more children aged six (6) years or under resides or is expected to reside in that housing for the elderly or persons with disabilities] or any zero-bedroom dwelling.

(aa) "Target housing," as this term refers to renovations, means any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any one or more children under the age of six (6) years resides or is expected to reside in that housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

(bb) "Worker" means any individual who works on abatements or renovations.

SOURCES: Laws, 1997, ch. 390, § 3; Laws, 2009, ch. 427, § 2, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-507. Powers and duties of commission.

In addition to any other powers and duties authorized by law, the commission shall have the following powers and duties regarding lead-based paint activities:

(a) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under Sections 49-17-501 through 49-17-531;

(b) To issue, reissue, suspend, revoke or deny the issuance or reissuance of accreditation for lead-based paint activity training programs and to require the modification of those training programs;

(c) To issue, reissue, suspend, revoke or deny the issuance or reissuance of certificates for risk assessors, project designers, supervisors, renovators, dust sampling technicians, inspectors and workers involved in lead-based paint activities;

(d) To develop and require the use of work practice standards for lead-based paint activities and to monitor compliance with those work practice standards;

(e) To establish pre-renovation information distribution requirements and monitor compliance with those requirements;

(f) To enforce and assess penalties for violations of Sections 49-17-501 through 49-17-531;

(g) To assess and collect fees for the accreditation of training programs, issuance and reissuance of certificates, and lead-based paint abatement and renovation projects;

(h) To develop an examination and grading system for testing applicants to be administered by accredited training programs;

(i) To establish requirements and procedures for the administration of a third-party certification examination;

(j) To enter into reciprocal agreements for accreditation of training programs and certification of risk assessors, project designers, supervisors, renovators, dust sampling technicians, inspectors and workers with other states that have established accreditation and certification programs that meet or exceed the accreditation and certification requirements adopted under Sections 49-17-501 through 49-17-531;

(k) To apply for, receive and expend any contributions, gifts, devises, bequests or funds from any source relating to Sections 49-17-501 through 49-17-531;

(*l*) To enter into, and to authorize the executive director to execute with the approval of the commission, contracts, grants and cooperative agreements, except as limited under Section 49-2-9, with any federal or state agency or subdivision thereof, any public or private institution, or any other person in connection with carrying out Sections 49-17-501 through 49-17-531; and

(m) To discharge other duties, responsibilities and powers necessary to implement Sections 49-17-501 through 49-17-531.

SOURCES: Laws, 1997, ch. 390, § 4; Laws, 2009, ch. 427, § 3, eff from and after passage (approved Mar. 23, 2009.)

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations, see § 49-17-25.

§ 49-17-509. Authority of commission; applicability of Sections 49-17-501 through 49-17-531.

(1) The commission shall adopt regulations for accreditation of lead-based paint activity training programs. Accredited training programs shall ensure the availability of, and provide adequate facilities for, the delivery of lectures, course tests, hands-on training and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed. The training program shall offer courses which teach work practice standards for conducting lead-based paint activities as adopted by the United States Environmental Protection Agency or the commission under Sections 49-17-501 through 49-17-531. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for. The commission also may adopt accreditation requirements for training programs providing refresher training programs.

(2) The commission shall adopt regulations establishing work practice standards for performing lead-based paint activities in target housing and child-occupied facilities. These standards may include appropriate documented methodologies, clearance levels and requirements for lead hazard screens, risk assessments, abatement activities, renovation activities, sample collection and analysis and record keeping. Beginning on August 31, 1998, all lead-based paint activities shall be performed in accordance with work practice standards adopted under Sections 49-17-501 through 49-17-531. The commission shall implement a compliance monitoring program to ensure compliance with the work practice standards.

(3) The commission shall adopt regulations for certification of lead-based paint risk assessors, project designers, renovators, dust sampling technicians, supervisors, inspectors and workers.

(4) Applicants for the issuance or reissuance of certificates required under Sections 49-17-511 through 49-17-519 shall submit to the commission, on forms prepared by the commission, an application. In addition, the applicant shall submit documentation deemed appropriate by the commission providing the educational background and demonstrating satisfactory completion of the applicable training programs and shall pay the applicable fee.

(5) The commission shall require certificates issued under Sections 49-17-511 through 49-17-521 to be reissued annually.

(6) Except as otherwise required by Sections 49-17-501 through 49-17-531, regulations adopted under Sections 49-17-501 through 49-17-531 shall be no more stringent than federal regulations for lead-based paint activities.

(7) Sections 49-17-501 through 49-17-531 do not apply to a person who is performing lead-based paint activities or abatement of lead-based paint hazards or renovation in a residential dwelling owned by that person, unless the residential dwelling is occupied by a person or persons other than the owner or owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(8) Sections 49-17-501 through 49-17-531 do not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six (6) resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in Sections 49-17-501 through 49-17-531.

SOURCES: Laws, 1997, ch. 390, § 5; Laws, 2000, ch. 500, § 1; Laws, 2009, ch. 427, § 4, eff from and after passage (approved Mar. 23, 2009.)

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations, see § 49-17-25.

§ 49-17-511. Lead-based paint risk assessor certificate required.

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint risk assessor certificate to conduct a risk assessment or lead hazard screen as part of any lead-based paint activity.

(2) To qualify for a lead-based paint risk assessor certificate, an applicant shall:

(a)(i) Be a registered professional engineer or a licensed architect; or

(ii) Have a bachelor's degree in a profession related to engineering, health or environmental science and one (1) year of experience in a related field, as determined by the commission; or

(iii) Have an associate's degree and two (2) years of experience in a related field, as determined by the commission; or

(iv) Have a high school diploma or equivalent and three (3) years of experience in a related field, as determined by the commission;

(b) Satisfactorily complete an accredited training program for lead-based paint risk assessors and lead-based paint inspectors; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 1997, ch. 390, § 6, eff from and after July 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2)(a)(ii) by inserting the word "a" preceding "bachelor's degree..." The Joint Committee ratified the correction at its August 16, 2012, meeting.

ATTORNEY GENERAL OPINIONS

The provisions of §§ 49-17-511 through 49-15-521 will not have any force and effect during the period in which the EPA Administrator has withdrawn authorization of the state certification program, which began on June 28, 2002, and, therefore, the state could not require more than a certification issued by the EPA for any lead-based paint activities contractor carrying out lead-based paint activities in the state after June 28, 2002, until such time that the EPA Administrator again approved the state program. Chisolm, May 31, 2002, A.G. Op. #02-0231.

§ 49-17-513. Lead-based paint project designer certificate required.

(1) After August 31, 1998, it is unlawful for any person who does not possess a valid lead-based paint project designer certificate to prepare abatement project designs, occupant protection plans and abatement reports.

(2) To qualify for a lead-based paint project designer certificate, an applicant shall:

(a)(i) Be a registered professional engineer or a licensed architect; or

(ii) Have a bachelor's degree in engineering, architecture or a profession related to engineering or architecture and one (1) year of experience in building design or a related field, as determined by the commission; or

(iii) Have an associate's degree and two (2) years of experience in building design or a related field, as determined by the commission; or

(iv) Have a high school diploma or equivalent and three (3) years of experience in building design or a related field, as determined by the commission;

(b) Satisfactorily complete an accredited training program for lead-based paint project designers and lead-based paint supervisor; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 1997, ch. 390, § 7, eff from and after July 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2)(a)(ii) by inserting the word "a" preceding "bachelor's degree..." The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 49-17-515. Lead-based paint supervisor certificate required.

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint supervisor certificate to direct a lead-based paint abatement activity and to prepare occupant protection plans and abatement reports.

(2) To qualify for a lead-based paint supervisor certificate, an applicant shall:

(a) Have a high school diploma or its equivalent and one (1) year of experience as a certified lead-based paint abatement worker or two (2) years of experience in a related field, as determined by the commission or in the building trades;

(b) Satisfactorily complete an accredited training program for lead-based paint supervisors; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 1997, ch. 390, § 8, eff from and after July 1, 1997.

§ 49-17-516. Lead-based paint renovator certificate required.

(1) After July 1, 2009, it is unlawful for an individual who does not possess a valid lead-based paint renovator certificate to direct a lead-based paint renovation activity and/or conduct testing to determine the presence of lead-based paint on components affected by renovation activities.

(2) To qualify for a lead-based paint renovator certificate, an applicant shall:

(a) Have a high school diploma or its equivalent and one (1) year of experience as a lead-based paint abatement or renovation worker or two (2) years of experience in a related field, as determined by the commission or in the building trades;

(b) Satisfactorily complete an accredited training program for lead-based paint renovators; or

(c) Have successfully completed an accredited abatement worker or supervisor course, or have successfully completed an EPA, HUD or EPA/HUD model renovation training course and have taken an accredited refresher renovator training course; and

(d) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 2009, ch. 427, § 9, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-517. Lead-based paint inspector certificate required.

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint inspector certificate to work as an inspector on a lead-based paint activity.

(2) To qualify for a lead-based paint inspector certificate, an applicant shall:

(a) Have a high school diploma or its equivalent;

(b) Satisfactorily complete an accredited training program for lead-based paint inspectors; and

(c) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 1997, ch. 390, § 9, eff from and after July 1, 1997.

§ 49-17-518. Lead-based paint dust sampling technician certificate required.

(1) After July 1, 2009, it is unlawful for an individual who does not possess a valid lead-based paint dust sampling technician certificate to work as a dust sampling technician on a lead-based paint renovation.

(2) To qualify for a lead-based paint dust sampling technician certificate, an applicant shall:

(a) Have a high school diploma or its equivalent;

(b) Satisfactorily complete an accredited training program for lead-based paint dust sampling technicians; or

(c) Have successfully completed an accredited lead-based paint inspector or risk assessor course and have completed an accredited refresher dust sampling technician course; and

(d) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

SOURCES: Laws, 2009, ch. 427, § 10, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-519. Lead-based paint abatement worker certificate required; certificate not required for work on renovation activities.

(1) After August 31, 1998, it is unlawful for an individual who does not possess a valid lead-based paint abatement worker certificate to work as a worker on a lead-based paint abatement activity.

(2) After August 31, 1998, it is unlawful for a firm to employ a person as a worker on a lead-based paint abatement activity who does not possess a valid lead-based paint abatement worker certificate in accordance with this section.

(3) To qualify for a lead-based paint abatement worker certificate an individual shall:

(a) Satisfactorily complete an accredited training program for lead-based paint abatement workers; and

(b) Demonstrate to the satisfaction of the commission that the applicant is familiar with and capable of complying fully with all applicable federal and state laws and regulations.

(4) Workers engaged in renovation activities are not required to possess certification.

SOURCES: Laws, 1997, ch. 390, § 10; Laws, 2009, ch. 427, § 5, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-521. Lead-based paint certified firm certificate required; certificates to indicate whether firm is certified for renovations or abatements or both.

(1) After August 31, 1998, it is unlawful for any firm which does not possess a valid lead-based paint certified firm certificate to perform or offer to perform any lead-based paint activity covered under Sections 49-17-501 through 49-17-531. Certificates issued prior to July 1, 2009, shall be valid only for abatements. Certificates issued after July 1, 2009, shall indicate whether the firm is certified for renovations or abatements; or certified for both renovations and abatements.

(2) To qualify for a lead-based paint certified firm certificate, an applicant shall submit to the commission a letter attesting that the firm shall employ only appropriately certified employees to conduct lead-based paint activities and that the firm and its employees shall follow the work practice standards adopted under Sections 49-17-501 through 49-17-531 in conducting those activities. Applicant's letter submitted after July 1, 2009, shall indicate whether the applicant intends to perform renovations or abatements; or to perform both renovations and abatements.

(3) Applicants for lead-based paint certified firm certificate shall pay the applicable fee.

SOURCES: Laws, 1997, ch. 390, § 11; Laws, 2009, ch. 427, § 6, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-523. Denial of issuance or reissuance of certificates.

The commission may deny the issuance or reissuance of any certificate required under Sections 49-17-511 through 49-17-521 if: (a) there has been a failure to comply with the application procedures established by regulations promulgated by the commission; (b) if the applicant fails to satisfy the application criteria established by Sections 49-17-501 through 49-17-531 and by regulations promulgated by the commission; or (c) if the applicant fails to pay the applicable fee.

SOURCES: Laws, 1997, ch. 390, § 12, eff from and after July 1, 1997.

§ 49-17-525. Creation of Lead-Based Paint Program Operations Fund; fees.

(1)(a) There is created in the State Treasury a fund to be designated as the Lead-Based Paint Program Operations Fund, referred to in this section as "fund," to be administered by the executive director and expended by appropriation approved by the Legislature.

(b) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the administration, educational outreach and enforcement of the lead-based paint activity accreditation and certification program.

(c) Expenditures may be made from the fund upon requisition by the executive director.

(d) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(e) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(f) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year to be expended by appropriation approved by the Legislature.

(2)(a) The commission shall set by order a schedule of fees for the accreditation of training programs, issuance and reissuance of certificates and lead-based paint abatement and renovation projects. The commission shall graduate fee levels to reflect the type of certificate and the size of the project, as the case may be.

(b) All monies collected under this section shall be deposited into the fund.

(c) The commission may delegate to the department responsibility for the collection of fees under this section.

(d) Any person required to pay a fee under this section who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with Section 49-17-35, Mississippi Code of 1972. Any hearing shall be in accordance with the provisions of Section 49-17-33, Mississippi Code of 1972.

(e) Fees collected under this section shall not supplant or reduce in any way the general fund appropriation to the department.

SOURCES: Laws, 1997, ch. 390, § 13; Laws, 2009, ch. 427, § 7, eff from and after passage (approved Mar. 23, 2009.)

§ 49-17-527. Prohibitions under chapter.

It is unlawful to:

(a) Fail or refuse to comply with any rule, regulation or order of the commission issued under Sections 49-17-501 through 49-17-531;

(b) Fail or refuse to establish, maintain, provide, copy, or permit access to records or reports as required by Sections 49-17-501 through 49-17-531 regulations adopted under Sections 49-17-501 through 49-17-531;

(c) Fail or refuse to permit entry or inspection as required by Sections 49-17-501 through 49-17-531 or regulations adopted under Sections 49-17-501 through 49-17-531;

(d) Obtain certification through fraudulent representation;

(e) Fail to obtain certification from the commission or the United States Environmental Protection Agency and perform work requiring certification at a job site; or

(f) Fraudulently obtain certification and engage in any lead-based paint activities requiring certification.

SOURCES: Laws, 1997, ch. 390, § 14, eff from and after July 1, 1997.

§ 49-17-529. Penalties; reprimands; suspension and revocation of certificates; procedure; deposit of collected monies.

(1) Any person found by the commission to have violated Sections 49-17-501 through 49-17-531 or any rule or regulation or written order of the commission issued under Sections 49-17-501 through 49-17-531 or any certificate or accreditation issued under Sections 49-17-501 through 49-17-531 shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00) for each violation. The penalty may be assessed and levied by order of the commission after notice and hearing in accordance with subsection (5) of this section. In addition, the commission may issue a reprimand or a suspension or revocation of any certificate issued to the person under Sections 49-17-501 through 49-17-531. The reprimand, suspension or revocation may be assessed and levied by order of the commission after notice and hearing as provided in subsection (5) of this section.

(2) In lieu of, or in addition to, the penalty provided for in subsection (1) of this section, the commission may institute and maintain in the name of the state any proceedings necessary to enforce Sections 49-17-501 through 49-17-531, rules and regulations adopted under Sections 49-17-501 through 49-17-531, and orders and certificates issued under Sections 49-17-501 through 49-17-531 in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and it shall not be necessary in those cases that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who knowingly submits false or inaccurate information in support of an application for issuance or reissuance of an accreditation or a certificate under Sections 49-17-501 through 49-17-531 or who willfully fails to

comply with the conditions of the accreditation or the certificate issued by the commission or who willfully violates Sections 49-17-501 through 49-17-531, or any rule, regulation or written order of the commission or emergency order issued by the director in pursuance thereof, upon conviction, shall be guilty of a misdemeanor and fined not less than One Hundred Dollars ($100.00) within the discretion of the court. Each day in which that violation exists or continues shall constitute a separate offense.

(4) In addition to or in lieu of filing a criminal complaint for the willful misconduct described in subsection (3) of this section, the commission may impose a civil penalty in accordance with subsection (1)(a) of this section, and shall impose a reprimand or a suspension or revocation of any certificate in accordance with subsection (1)(b) of this section.

(5) All proceedings and hearings before the commission regarding violations of Sections 49-17-501 through 49-17-531 or any rule or regulation, written order of the commission, emergency order of the director or certificate issued or reissued by the commission in pursuance thereof or any certificate issued under Sections 49-17-501 through 49-17-531 and all appeals therefrom shall be conducted in accordance with Sections 49-17-31 through 49-17-41, Mississippi Code of 1972.

(6) All fines, penalties and other sums recovered or collected by the commission for and on behalf of the state under this section shall be deposited in the Pollution Emergency Fund established under Section 49-17-68, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 390, § 15, eff from and after July 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The reference to "subsection (1)(a)" was changed to "subsection (1)" so that "the penalty provided for in subsection (1)(a) of this section" now reads "the penalty provided for in subsection (1) of this section." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 49-17-531. Authority of commission to establish reciprocity requirements.

The commission may establish requirements for reciprocity for accreditation and certification of risk assessors, project designers, supervisors, renovators, dust sampling technicans, inspectors and workers with other states that have established accreditation and certification programs that meet or exceed the requirements established by the commission for accreditation and certification in this state.

SOURCES: Laws, 1997, ch. 390, § 16; Laws, 2009, ch. 427, § 8, eff from and after passage (approved Mar. 23, 2009.)

GENERATION OF HAZARDOUS WASTE IN THE MANUFACTURE OF CONTROLLED SUBSTANCES

SEC.
49-17-601. Legislative intent.
49-17-603. Definitions; generation of waste in manufacture of controlled substances prohibited; penalties; exceptions.

§ 49-17-601. Legislative intent.

It is the intent of the Legislature to make unlawful the generation of wastes occurring in the illegal manufacture or attempted illegal manufacture of controlled substances through the mixing, combining, processing or cooking of listed precursor chemicals.

SOURCES: Laws, 2001, ch. 560, § 1, eff from and after July 1, 2001.

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101 et seq. Miscellaneous narcotic drug regulations, see §§ 41-29-301 et seq.

§ 49-17-603. Definitions; generation of waste in manufacture of controlled substances prohibited; penalties; exceptions.

(1) The definitions used in this section are expressly limited to this section only, and the inclusion of indoor air in the definition of "waste" does not expand the jurisdiction of the Commission on Environmental Quality or the Department of Environmental Quality to include the regulation of indoor air:

(a) "By-product" means a substance produced without a separate intent during the manufacture, processing, use or disposal of another substance or mixture; and

(b) "Waste" means all liquid, gaseous, solid, radioactive or other substances that may pollute or tend to pollute any waters of the state or soil within the state, and any particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, that may pollute or tend to pollute air in the state, including indoor air.

(2) The generation of waste in any quantity by any person caused by the mixing, combining, processing or cooking together of two (2) or more precursor drugs or chemicals listed in Section 41-29-313 is unlawful unless:

(a) The person has first obtained a generator identification number pursuant to the Resource Conservation and Recovery Act, 42 USCS Section 6901 et seq., and the regulations promulgated thereunder; or

(b) The person has first obtained a treatment, storage or disposal permit pursuant to the Resource Conservation and Recovery Act, 42 USCS Section 6901 et seq., and the regulations promulgated thereunder; or

(c) The process that generated the waste also, as part of the same process:

(i) Created a product that is not illegal to possess pursuant to Section 41-29-139(c);

(ii) Created a by-product that is not illegal to possess pursuant to Section 41-29-139(c), while not at the same time producing a controlled substance; or

(iii) Was a process of servicing, maintaining or cleaning an item or product that is not illegal to possess pursuant to Section 41-29-139(c).

(3) Any person who violates this section, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed thirty (30) years and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00), or may be both fined and imprisoned.

(4) Nothing in this section shall preclude any farmer or manufacturer from storing or using any of the listed precursor drugs or chemicals listed in Section 41-29-313 in the normal pursuit of farming or manufacturing operations.

(5) Nothing in this section shall preclude any wholesaler, retailer or pharmacist from possessing or selling precursor drugs or chemicals listed in Section 41-29-313 in the normal pursuit of business.

(6) Except as may be otherwise provided, a property owner or occupant of land shall not be criminally or civilly liable for the generation of waste caused by the criminal acts of persons other than the property owner or occupant of such land if the property owner or occupant did not have prior knowledge of the criminal activity.

SOURCES: Laws, 2001, ch. 560, § 2; Laws, 2005, ch. 463, § 5, eff from and after July 1, 2005.

MISSISSIPPI GULF REGION UTILITY ACT

SEC.

49-17-701. Title.
49-17-703. Legislative findings.
49-17-705. Definitions.
49-17-707. Creation of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2016].
49-17-709. Board of Directors of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2016].
49-17-711. Employees; budget [Repealed effective July 1, 2016].
49-17-713. Duties and responsibilities of the utility board [Repealed effective July 1, 2016].
49-17-715. Creation of the George County Utility Authority.
49-17-717. Board of Directors for George County Utility Authority.
49-17-719. Creation of the Pearl River County Utility Authority.
49-17-721. Board of Directors for Pearl River County Utility Authority.
49-17-723. Creation of the Stone County Utility Authority.
49-17-725. Board of Directors for Stone County Utility Authority.
49-17-727. Creation of the Harrison County Utility Authority.
49-17-729. Board of Directors for Harrison County Utility Authority.
49-17-731. Creation of the Jackson County Utility Authority.
49-17-733. Board of Directors for Jackson County Utility Authority.
49-17-735. Creation of the Hancock County Utility Authority.
49-17-737. Board of Directors for Hancock County Utility Authority.

49-17-739. Provisions common to the county authorities.
49-17-741. Board of directors, officers, compensation.
49-17-743. Powers of the county authorities.
49-17-745. Promulgation of rules and regulations relating to construction, operation and maintenance of any water, wastewater and storm water systems within each county authority's service area.
49-17-747. Contracts between public agencies or persons and the county authority for provision of water, wastewater and storm water services by the county authority; payment for services and contributions by public agencies.
49-17-749. Rates, fees and other charges by public agencies for services provided by county authority.
49-17-751. Public Service Commission notice.
49-17-753. Validation of prior indebtedness.
49-17-755. The power to borrow money and to issue revenue bonds.
49-17-757. Bonds of county authority.
49-17-759. Validation of bonds.
49-17-761. Payment of bonds.
49-17-763. Powers of county authority in connection with issuance of bonds.
49-17-765. Appointment of trustee to represent bond owners; appointment of receiver.
49-17-767. Exemption of county authority from taxes and fees; bonds to be free from taxation; exceptions.
49-17-769. Bonds as legal investments and securities.
49-17-771. Rights and powers of county authority to remain unchanged while bonds are outstanding and unpaid.
49-17-773. Advance of funds or issuance of notes authorized; terms and conditions.
49-17-775. Severability of provisions.

§ 49-17-701. Title.

Sections 49-17-701 through 49-17-775 shall be known and may be cited as the "Mississippi Gulf Coast Region Utility Act."

SOURCES: Laws, 2006, ch. 546, § 1, eff from and after passage (approved Apr. 18, 2006.)

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

Because the Mississippi Gulf Coast Regional Utility Act expressly applies only to utility systems which are "connected with, or tied into" the systems of a county authority, the determination as to whether a system is covered by the Act is best left to the county authorities, and the Department of Health may not expand the Act to include other systems. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

The Department of Health's current policy of first seeking direction from the county authority before proceeding with approval or renewal of a water, wastewater or storm water system is consistent with, and satisfies the Department's duties under the Mississippi Gulf Coast Regional Utility Act and other state laws. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

§ 49-17-703. Legislative findings.

In the spirit of the report of the Governor's Commission on Recovery, Rebuilding and Renewal, the Legislature finds that there is a need for consolidation of water, wastewater and storm water services in order to reduce costs, promote resilience in the event of a disaster, improve the quality of the natural environment, and improve the planning and delivery of quality water, wastewater and storm water services within the areas of the Counties of George, Hancock, Harrison, Jackson, Pearl River and Stone. It is further declared that there is the need for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater and storm water services in order to ensure protection of the waters of the state and to ensure the delivery of water, wastewater and storm water services to citizens of the Gulf Coast Region. The creation of the Mississippi Gulf Coast Region Utility Act is determined to be necessary and essential to the accomplishment of these purposes. To facilitate the purposes of the act, the Gulf Coast Region Utility Board, the George County Utility Authority, the Hancock County Utility Authority, the Harrison County Utility Authority, the Jackson County Utility Authority, the Pearl River County Utility Authority and the Stone County Utility Authority are created herein.

SOURCES: Laws, 2006, ch. 546, § 2, eff from and after passage (approved Apr. 18, 2006.)

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 49-17-705. Definitions.

Words and phrases used in this act shall have meanings as follows:

(a) "Act" means the Mississippi Gulf Coast Region Utility Act.

(b) "Bonds" mean interim notes having a maturity of three (3) years or less, revenue bonds and other certificates of indebtedness of the authority issued under the provisions of this act.

(c) "County authority" means a county utility authority created in the Gulf Coast Region under this act.

(d) "Fiscal year" means the period of time beginning on October 1 of each year and ending on September 30 of each year.

(e) "Gulf Coast Region" means the areas encompassed by the Counties of George, Hancock, Harrison, Jackson, Pearl River and Stone.

(f) "Municipality" means any incorporated city, town or village of the State of Mississippi, whether operating under general law or under special charter, lying wholly or partly within the Gulf Coast Region.

(g) "Person" means the State of Mississippi, a county, a municipality, any public agency, or any other city, town, village or political subdivision or governmental agency, governmental instrumentality of the State of Mississippi or of the United States of America, or any private utility, individual, co-partnership, association, firm, trust, estate or any other entity whatsoever.

(h) "Project" means the construction, development or acquisition by the county authority or county authorities of any infrastructure for water, wastewater and storm water systems or services and includes upgrading or repair of existing systems.

(i) "Public agency" means any county, municipality, state board or commission owning or operating properties, district created pursuant to the general laws or local and private laws of the State of Mississippi, or other political subdivision of the State of Mississippi having the power to own and operate waterworks, water supply systems, sewerage systems, sewage treatment systems or other facilities or systems for the collection, transportation and treatment of water, wastewater and storm water.

(j) "Storm water" means any flow occurring during or following any form of natural precipitation and resulting from that precipitation.

(k) "System" or "systems" means any plants, structures, facilities and other real and personal property, used or useful in the generation, storage, transportation or supply of water, and the collection, transportation, treatment or disposal of wastewater and storm water, including, but not limited to, tanks, lakes, streams, ponds, pipes, trunk lines, mains, sewers, conduits, pipelines, pumping and ventilating stations, plants and works, connections and any other real and personal property and rights therein necessary, useful or convenient for the purposes of the utility board or authorities in connection therewith.

(*l*) "Wastewater" means water being disposed of by any person and which is contaminated with waste or sewage, including industrial, municipal and any other wastewater that may cause impairment of the quality of the waters in the state.

(m) "Water" means potable water, service water and groundwater.

(n) "Utility board" means the Mississippi Gulf Coast Region Utility Board.

SOURCES: Laws, 2006, ch. 546, § 3, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-707. Creation of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2016].

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Mississippi Gulf Coast Region Utility Board" to serve the citizens of the Gulf Coast Region. The utility board is created as a forum for the Gulf Coast Region to collaborate and cooperate regarding water, wastewater

and storm water issues; to assist in the efficient management of water, wastewater and storm water resources; to develop recommendations pertaining to water, wastewater and storm water systems; and to provide assistance, funding and guidance to the county authorities to assist in the identification of the best means to meet all present and future water, wastewater and storm water needs in the Gulf Coast Region.

(2) This section shall repeal July 1, 2016.

SOURCES: Laws, 2006, ch. 546, § 4; Laws, 2009, ch. 494, § 1; Laws, 2011, ch. 446, § 1, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment extended the repealer provision in (2), from "July 1, 2011" to "July 1, 2016."

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 49-17-709. Board of Directors of the Mississippi Gulf Coast Region Utility Board [Repealed effective July 1, 2016].

(1)(a) All powers of the Mississippi Gulf Coast Region Utility Board shall be exercised by a board of directors to be composed of the following: (i) the president of each county authority; and (ii) three (3) at-large directors, to be appointed by the Governor, who shall be residents of the Gulf Coast Region.

(b) The initial terms of the at-large directors shall be for two (2), four (4) and six (6) years as designated by the Governor. After the expiration of the initial terms, the subsequent terms shall be for a period of six (6) years. However, there shall be no more than one (1) at-large director appointed from any one (1) county. Each president may appoint a delegate, to represent him at a meeting of the board.

(2) At the initial meeting of the board, the board shall elect a president and a vice president. Thereafter, the board will annually, at the last meeting of the fiscal year, elect a president and a vice president who shall serve in their respective offices for the next fiscal year. The directors shall serve without a salary but are entitled to receive per diem pay as provided for in Section 25-3-69, and for actual and necessary expenses incurred while in the performance of his duties as a member of the board as provided in Section 25-3-41.

(3) Any utility board member who does not attend three (3) consecutive regular meetings of the authority shall be subject to removal by a majority vote of the board and shall be replaced with an appointment from the Governor or governing body making the initial appointment.

(4) The president shall be the chief executive officer of the utility board and the presiding officer of the board, and shall have the same right to vote as

any other director. The vice president shall act in the absence or disability of the president. Each director shall be required to give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00), with sureties qualified to do business in this state, and the premiums on the bond shall be an expense of the utility board. Each bond shall be payable to the State of Mississippi. The condition of each bond shall be that each director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as a director of the utility board.

(5) A quorum for any meeting of the board of directors shall be the majority of the total membership of the board of directors. All business of the utility board shall be transacted by vote of the board of directors.

(6) The utility board shall conduct regular meetings as set forth in its bylaws. The utility board shall establish rules and regulations regarding its meetings and may amend such bylaws, rules and regulations as may be necessary to conduct the business of the board.

(7) This section shall repeal July 1, 2016.

SOURCES: Laws, 2006, ch. 546, § 5; Laws, 2009, ch. 494, § 2; Laws, 2011, ch. 446, § 2, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment inserted "Region" preceding "Utility Board" in (1) and extended the repealer provision in (7), from "July 1, 2011" to "July 1, 2016."

§ 49-17-711. Employees; budget [Repealed effective July 1, 2016].

(1) The utility board may hire an executive director and secretary-treasurer having the duties as determined by the utility board. The executive director must have a college degree. If hired, the executive director and secretary-treasurer each shall be required to give bond in a sum not less than Fifty Thousand Dollars ($50,000.00), conditioned on the executive director and secretary-treasurer faithfully performing all duties of his office and account for all money and other assets which come into his custody as executive director or secretary-treasurer of the utility board.

(2)(a) The utility board shall prepare a budget consistent with its bylaws estimating its expenses and revenue needs for each forthcoming fiscal year at least ninety (90) days prior to the beginning of each fiscal year. The utility board shall submit its budget to each county authority prior to final approval by the utility board.

(b) Any funds, gifts or grants allocated for the administrative costs related to the restoration or construction of water, wastewater and storm water services and projects in the Gulf Coast Region under this act shall, to the extent allowable, be paid into the Public Trust Tidelands Fund for the repayment of any tideland funds expended for the operational costs of the utility board.

(3) The utility board shall have the authority to receive and spend funds from any source.

(4) This section shall repeal July 1, 2016.

SOURCES: Laws, 2006, ch. 546, § 6; Laws, 2009, ch. 494, § 3; Laws, 2011, ch. 446, § 3, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment extended the repealer provision in (4), from "July 1, 2011" to "July 1, 2016."

§ 49-17-713. Duties and responsibilities of the utility board [Repealed effective July 1, 2016].

(1) The utility board shall have the right and powers necessary to carry out the purposes of this act, including, but not limited to:

(a) Make recommendations to the county authorities pertaining to water, wastewater and storm water issues in the Gulf Coast Region;

(b) Make recommendations necessary to achieve compatibility and uniformity of systems and technology related to water, wastewater and storm water in the Gulf Coast Region;

(c) Help resolve cross-jurisdictional and multicounty disputes pertaining to water, wastewater and storm water issues between county authorities when requested by the county authorities;

(d) Recommend short-term and long-term priorities for water, wastewater and storm water related projects;

(e) Recommend emergency preparedness procedures in the Gulf Coast Region related to water, wastewater and storm water;

(f) Recommend training standards related to operations of water, wastewater and storm water systems;

(g) Sue and be sued in its own name and to enjoy all the protections, immunities and benefits provided by the Mississippi Tort Claims Act, as it may be amended from time to time;

(h) Adopt an official seal and alter the same at pleasure;

(i) Maintain office space at such place or places within the boundaries of the board as it may determine;

(j) Own or lease real or personal property;

(k) Invest money of the utility board, including proceeds from the sale of any bonds subject to any agreements with bond holders on such terms and in such manner as the utility board deems proper;

(*l*) Apply for, accept and utilize grants, gifts and other funds from any source for any purpose necessary in support of the purpose of this act and to coordinate the distribution of funds to the county authorities;

(m) Employ and terminate staff, including, but not limited to, attorneys, engineers and consultants as may be necessary;

(n) Enter into contracts for all operation and maintenance needs of the utility board;

(o) Enter into contracts to conduct studies of regional issues regarding water, wastewater and storm water services and to provide assistance, funds and guidance in the construction, operation and maintenance of regional water, wastewater and storm water services;

(p) Enter into contracts with any person or any public agency in furtherance of any of the purposes authorized by this act upon such consideration as the board of directors and such person may agree. Any such contract may extend over any period of time, including a term which extends beyond the term of the then majority of the existing board members, notwithstanding any provision or rule of law to the contrary; may be upon such terms and for such consideration, nominal or otherwise, as the parties thereto shall agree; and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds, and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties thereto according to its terms. The utility board may also assume or continue any contractual or other business relationships entered into by the members of the utility board, including the rights to receive and acquire property transferred under option to purchase agreements;

(q) Contract with the authorities under any terms mutually agreed by the parties to carry out any powers, duties or responsibilities granted by this act or any other laws to the authorities;

(r) Acquire insurance for the utility board's systems, facilities, buildings, treatment plants and all property, real or personal, to insure against all risks as any insurance may, from time to time, be available;

(s) Make, enforce, amend and repeal rules and regulations for the management of the utility board's business and affairs;

(t) Enter onto public or private lands, waters or premises for the purposes of making surveys, borings or soundings, or conducting tests, examinations or inspections for the purposes of the utility board, subject to responsibility for any damage done to property entered;

(u) Apply, contract for, accept, receive and administer gifts, grants, appropriations and donations of money, materials, and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, district or instrumentality of any of the foregoing, upon any terms and conditions as the United States, the state, a unit of local government, or any agency, department, district or instrumentality shall impose;

(v) Create, maintain and regulate reservoirs and promulgate and enforce rules and regulations for the creation and maintenance of reservoirs; and

(w) Make other recommendations to carry out the purposes of this act.

(2) This section shall repeal July 1, 2016.

SOURCES: Laws, 2006, ch. 546, § 7; Laws, 2009, ch. 494, § 4; Laws, 2011, ch. 446, § 4, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment deleted "Utility board may" from the beginning of (1)(v); and extended the repealer provision in (2), from "July 1, 2011" to "July 1, 2016."

Cross References — Mississippi Tort Claims Act, see generally §§ 11-46-1 et seq.

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 49-17-715. Creation of the George County Utility Authority.

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "George County Utility Authority," unless the George County Board of Supervisors dissolves the authority by January 1, 2007, as provided in subsection (2). The authority will be composed of the geographic area of George County as defined in Section 19-1-39, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater and storm water systems in order to ensure the delivery of water, wastewater and storm water services to citizens residing within the boundaries of George County. The George County Utility Authority shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and the George County Utility Authority shall be empowered in accordance with the provisions of this act to promote the health, welfare and prosperity of the general public.

(2) [Repealed]

(3) If the county authority is dissolved, the board of supervisors may reestablish the county authority by a resolution duly adopted and entered on its minutes stating the necessity for the county authority. The board shall file a certified copy of the resolution with the Secretary of State, the Public Service Commission and the utility board.

SOURCES: Laws, 2006, ch. 546, § 8, eff from and after passage (approved Apr. 18, 2006.)

Editor's Note — Former subsection (2) related to the board of supervisors' authority to dissolve the George County Utility Authority and was repealed by its own terms effective January 2, 2007.

§ 49-17-717. Board of Directors for George County Utility Authority.

(1) If the authority is created, all powers of the George County Utility Authority shall be exercised by a board of directors comprised of five (5) directors appointed as follows: Within thirty (30) days of creation of the authority, the Board of Supervisors of George County shall appoint three (3) residents from the county, and the Board of Aldermen of the City of Lucedale shall appoint two (2) residents from the city. The directors shall serve at the will and pleasure of the governing body making the appointments. Any

vacancy arising by expiration of a director's term, or a vacancy created by the removal of a director for any other reason, shall be filled by appointment made by the party originally responsible for the appointment of the director vacating his or her appointment.

(2) All business of the George County Utility Authority shall be transacted as provided in Section 49-17-741, except that all actions affecting rates, bonds or capital improvements must be by unanimous vote of all members of the board.

(3) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 9, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-719. Creation of the Pearl River County Utility Authority.

There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Pearl River County Utility Authority." The authority is composed of the geographic area of Pearl River County as defined in Section 19-1-109, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater and storm water systems in order to ensure the delivery of water, wastewater and storm water services to citizens residing within the boundaries of Pearl River County. The Pearl River County Utility Authority shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and the Pearl River County Utility Authority shall be empowered in accordance with the provisions of this act to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 10, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-721. Board of Directors for Pearl River County Utility Authority.

(1) All powers of the Pearl River County Utility Authority shall be exercised by a board of directors comprised of seven (7) directors appointed as follows: Within thirty (30) days of April 18, 2006, the Board of Supervisors of Pearl River County shall appoint four (4) residents from the county, and the Board of Aldermen of the City of Picayune shall appoint two (2) residents from the city, and the Board of Aldermen of the City of Poplarville shall appoint one (1) resident from the city. The directors shall serve at the will and pleasure of the governing body making the appointments.

(2) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 11, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-723. Creation of the Stone County Utility Authority.

There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Stone County Utility Authority." The authority is composed of the geographic area of Stone County as defined in Section 19-1-131, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater and storm water systems in order to ensure the delivery of water, wastewater and storm water services to citizens residing within the boundaries of Stone County. The Stone County Utility Authority shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and the Stone County Utility Authority shall be empowered in accordance with the provisions of this act to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 12, eff from and after passage (approved Apr. 18, 2006.)

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 49-17-725. Board of Directors for Stone County Utility Authority.

(1) All powers of the Stone County Utility Authority shall be exercised by a board of directors comprised of five (5) directors appointed as follows: Within thirty (30) days of passage of this act, the Board of Supervisors of Stone County shall appoint three (3) residents from the county, and the Board of Aldermen of the City of Wiggins shall appoint two (2) residents from the city. The directors shall serve at the will and pleasure of the governing body making the appointments.

(2) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights

granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 13, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-727. Creation of the Harrison County Utility Authority.

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Harrison County Utility Authority." The authority is composed of the geographic area of Harrison County as defined in Section 19-1-47, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater, storm water and solid waste systems in order to ensure the delivery of water, wastewater, storm water and solid waste services to citizens residing within the boundaries of Harrison County.

(2) Within thirty (30) days of April 18, 2006, the Harrison County Utility Authority and the Harrison County Wastewater and Solid Waste Management District shall consolidate into a single agency, to be known as the Harrison County Utility Authority, which shall be a continuance of the corporate existence of the Harrison County Wastewater and Solid Waste Management District. Such consolidation shall be effective by the concurrent resolution of the Harrison County Wastewater and Solid Waste Management District and the Harrison County Utility Authority and the filing of a copy of such concurrent resolution with the Secretary of State, certified by the Secretary of the Harrison County Wastewater and Solid Waste Management District and the Harrison County Utility Authority.

(3) Upon consolidation, the following shall apply:

(a) All property, rights and powers of the Harrison County Wastewater and Solid Waste Management District are hereby vested in and shall be exercised by the Harrison County Utility Authority, subject, however to all pledges, covenants, agreements and trusts made or created by the Harrison County Wastewater and Solid Waste Management District;

(b) All debts, liabilities, obligations, agreements, contracts and covenants of the Harrison County Wastewater and Solid Waste Management District are hereby imposed upon the Harrison County Utility Authority. Any property of the Harrison County Wastewater and Solid Waste Management District in which a mortgage or security interest has been granted to any bondholders or other creditors of the Harrison County Wastewater and Solid Waste Management District shall continue to be subject to the mortgage or security interest until the mortgage or security interest is defeased or terminated in accordance with its terms. All bondholders and other creditors of the Harrison County Wastewater and Solid Waste Management District and persons having claims against or contracts with the Harrison County Wastewater and Solid Waste Management District of any kind or character may enforce those debts, claims and contracts against the Harrison County Utility Authority in the same manner as they might have against the Harrison County Wastewater and Solid Waste Management District, and the rights and remedies of those bondholders, creditors, and persons having claims or contracts shall not be limited or restricted in any manner by this act;

(c) All regulations of the Harrison County Wastewater and Solid Waste Management District shall continue to be in effect as the regulations of the Harrison County Utility Authority until amended, supplemented or rescinded by the authority in accordance with law; and

(d) All employees of the Harrison County Wastewater and Solid Waste Management District shall become employees of the Harrison County Utility Authority. Nothing in this act shall affect the civil service status, if any, of those employees or their rights, privileges, obligations or status with respect to any pension or retirement system.

SOURCES: Laws, 2006, ch. 546, § 14, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-729. Board of Directors for Harrison County Utility Authority.

(1) All powers of the Harrison County Utility Authority shall be exercised by a consolidated board consisting of the Board of Directors of the Harrison County Wastewater and Solid Waste Management District and the additional director provided under this section for a total of seven (7) directors. Upon consolidation, the Board of Supervisors of Harrison County shall appoint one (1) additional director who shall be a resident of the unincorporated area from the county. The director shall serve at the will and pleasure of the board of supervisors. The consolidated board shall consist of the mayor of each city participating in the authority and the directors appointed by the board of supervisors. Each director may appoint a delegate to represent him at a meeting of the board.

(2) All business of the Harrison County Utility Authority shall be transacted as provided in Section 49-17-741, except that all actions affecting rates, bonds or capital improvements must be by unanimous vote of all members of the board.

(3) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public, including the power and right to regulate and control solid waste within its jurisdictional boundaries.

SOURCES: Laws, 2006, ch. 546, § 15, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-731. Creation of the Jackson County Utility Authority.

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Jackson County Utility Authority." The authority is composed of the geographic area of Jackson County as defined in Section 19-1-59, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water and wastewater systems in order to ensure the delivery of water and wastewater services to citizens residing within the boundaries of Jackson County.

(2) Within thirty (30) days of April 18, 2006, the Jackson County Utility Authority and the Mississippi Gulf Coast Regional Wastewater Authority shall consolidate into a single agency, to be known as the Jackson County Utility Authority, which shall be a continuance of the corporate existence of the Mississippi Gulf Coast Regional Wastewater Authority. Such consolidation shall be effective by the concurrent resolution of the Mississippi Gulf Coast Regional Wastewater Authority and the Jackson County Utility Authority and the filing of a copy of such concurrent resolution with the Secretary of State, certified by the Secretary of the Mississippi Gulf Coast Regional Wastewater Authority and the Jackson County Utility Authority.

(3) Upon consolidation the following shall apply:

(a) All property, rights and powers of the Mississippi Gulf Coast Regional Wastewater Authority are hereby vested in and shall be exercised by the Jackson County Utility Authority, subject, however to all pledges, covenants, agreements and trusts made or created by the Mississippi Gulf Coast Regional Wastewater Authority;

(b) All debts, liabilities, obligations, agreements, contracts and covenants of the Mississippi Gulf Coast Regional Wastewater Authority are hereby imposed upon the Jackson County Utility Authority. Any property of the Mississippi Gulf Coast Regional Wastewater Authority in which a mortgage or security interest has been granted to any bondholders or other creditors of the Mississippi Gulf Coast Regional Wastewater Authority shall continue to be subject to the mortgage or security interest until the mortgage or security interest is defeased or terminated in accordance with its terms. All bondholders and other creditors of the Mississippi Gulf Coast Regional Wastewater Authority and persons having claims against or contracts with the Mississippi Gulf Coast Regional Wastewater Authority of any kind or character may enforce those debts, claims and contracts against the Jackson County Utility Authority in the same manner as they might have against the Mississippi Gulf Coast Regional Wastewater Authority, and the rights and remedies of those bondholders, creditors, and persons having claims or contracts shall not be limited or restricted in any manner by this act;

(c) All regulations of the Mississippi Gulf Coast Regional Wastewater Authority shall continue to be in effect as the regulations of the Jackson County Utility Authority until amended, supplemented or rescinded by the Jackson County Utility Authority in accordance with law; and

(d) All employees of the Mississippi Gulf Coast Regional Wastewater Authority shall become employees of the Jackson County Utility Authority. Nothing in this act shall affect the civil service status, if any, of those employees or their rights, privileges, obligations or status with respect to any pension or retirement system.

SOURCES: Laws, 2006, ch. 546, § 16, eff from and after passage (approved Apr. 18, 2006.)

Editor's Note — The Mississippi Gulf Coast Regional Wastewater Authority (§§ 49-17-301 through 49-17-353) was repealed by § 40 of Chapter 546, Laws of 2006, effective from and after July 1, 2007.

§ 49-17-733. Board of Directors for Jackson County Utility Authority.

(1) Upon creation of the Jackson County Utility Authority, all powers of the Jackson County Utility Authority shall be exercised by the board of directors of the Mississippi Gulf Coast Regional Wastewater Authority.

(2) Upon consolidation of the Jackson County Utility Authority and the Mississippi Gulf Coast Wastewater Authority, the county authority shall be governed by a board consisting of seven (7) directors.

(a) The members of the Board of Directors of the Mississippi Gulf Coast Regional Wastewater Authority shall serve as Directors of the Jackson County Utility Authority until the expiration of their existing terms. Upon expiration of a member's term, the governing body making the appointment shall appoint a person residing within the corporate boundaries of the governing body to serve as a director.

(b) The City of Gautier shall appoint one (1) director who resides within the City of Gautier for an initial term of three (3) years.

(c) The Board of Supervisors of Jackson County shall appoint two (2) additional directors for an initial term of two (2) and four (4) years, respectively, who reside within the unincorporated area of Jackson County.

(3)(a) After expiration of the initial terms, all appointed directors shall serve a term of six (6) years.

(b) No director shall hold an elected public office.

(4) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2006, ch. 546, § 17, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-735. Creation of the Hancock County Utility Authority.

(1) There is hereby created and established a public body corporate and politic constituting a political subdivision of the State of Mississippi to be known as the "Hancock County Utility Authority." The authority is composed of the geographic area of Hancock County as defined in Section 19-1-59, Mississippi Code of 1972, for the planning, acquisition, construction, maintenance, operation and coordination of water, wastewater and storm water systems in order to ensure the delivery of water, wastewater and storm water services to citizens residing within the boundaries of Hancock County.

(2) Within thirty (30) days of April 18, 2006, the Hancock County Utility Authority and the Southern Regional Wastewater Management District shall consolidate into a single agency, to be known as the Hancock County Utility Authority, which shall be a continuance of the corporate existence of the Southern Regional Wastewater Management District. Such consolidation shall be effective by the concurrent resolution of the Southern Regional Wastewater Management District and the Hancock County Utility Authority and the filing of a copy of such concurrent resolution with the Secretary of State, certified by the Secretary of the Southern Regional Wastewater Management District and the Hancock County Utility Authority.

(3) Upon consolidation, the following shall apply:

(a) All property, rights and powers of the Southern Regional Wastewater Management District are hereby vested in and shall be exercised by the Hancock County Utility Authority, subject, however to all pledges, covenants, agreements and trusts made or created by the Southern Regional Wastewater Management District;

(b) All debts, liabilities, obligations, agreements, contracts and covenants of the Southern Regional Wastewater Management District are hereby imposed upon the Hancock County Utility Authority. Any property of the Southern Regional Wastewater Management District in which a mortgage or security interest has been granted to any bondholders or other creditors of the Southern Regional Wastewater Management District shall continue to be subject to the mortgage or security interest until the mortgage or security interest is defeased or terminated in accordance with its terms. All bondholders and other creditors of the Southern Regional Wastewater Management District and persons having claims against or contracts with the Southern Regional Wastewater Management District of any kind or character may enforce those debts, claims and contracts against the authority in the same manner as they might have against the Southern Regional Wastewater Management District, and the rights and remedies of those bondholders, creditors, and persons having claims or contracts shall not be limited or restricted in any manner by this act;

(c) All regulations of the Southern Regional Wastewater Management District shall continue to be in effect as the regulations of the Hancock County Utility Authority until amended, supplemented or rescinded by the Hancock County Utility Authority in accordance with law; and

(d) All employees of the Southern Regional Wastewater Management District shall become employees of the authority. Nothing in this act shall affect the civil service status, if any, of those employees or their rights, privileges, obligations or status with respect to any pension or retirement system.

SOURCES: Laws, 2006, ch. 546, § 18, eff from and after passage (approved Apr. 18, 2006.)

Editor's Note — The Southern Regional Wastewater Management District (§§ 49-17-161 through 49-17-209) was repealed by § 39 of Chapter 546, Laws of 2006, effective from and after July 1, 2007.

§ 49-17-737. Board of Directors for Hancock County Utility Authority.

(1) After consolidation, all powers of the Hancock County Utility Authority shall be exercised by a board consisting of the following:

(a) One (1) director who is the Mayor of Bay St. Louis, or his or her designee, for an initial term of two (2) years;

(b) One (1) director who is the Mayor of Waveland, or his or her designee, for an initial term of three (3) years;

(c) One (1) director who is the President of the Board of Supervisors of Hancock County, or his or her designee, for an initial term of four (4) years;

(d) One (1) director who is the Chairman of the Diamondhead Water and Sewer District;

(e) One (1) director who is the Chairman of the Kiln Utility and Fire District;

(f) One (1) director who is the Chairman of the Hancock County Water and Sewer District; and

(g) One (1) director who is the Chairman of the Pearlington Water and Sewer District.

After expiration of the initial terms, the directors in paragraphs (a), (b) and (c) shall serve a term of four (4) years.

(2) In addition to any other powers and rights conferred upon such board of directors, the board is granted and may exercise all powers and rights granted pursuant to Sections 49-17-739 through 49-17-773 to promote the health, welfare and prosperity of the general public.

(3) Any designee serving as a director shall serve at the will and pleasure of the governing authority that designated the director.

SOURCES: Laws, 2006, ch. 546, § 19; Laws, 2010, ch. 493, § 1; Laws, 2011, ch. 902, § 3, eff from and after passage (approved Mar. 30, 2011.)

Editor's Note — This section was amended by House Bill No. 569, Local and Private Laws of 2011, which was enrolled as Chapter 902.

Amendment Notes — The 2010 amendment, in (1)(a) through (1)(c), inserted "or his or her designee"; in (1)(a) and (1)(b), substituted "director who is" for "director appointed by"; in (1)(c), substituted "director who is the president of the board" for "director appointed by the board"; in the paragraph following (1)(g), substituted "directors" for "appointees" and "shall serve a term of four (4) years" for "shall be appointed a term of four (4) years"; and added (3).

The 2011 amendment substituted "Kiln Utility and Fire District" for "Kiln Fire and Water District" in (1)(e).

§ 49-17-739. Provisions common to the county authorities.

The purpose of Sections 49-17-739 through 49-17-773 is to confer certain powers on the county authorities for the purpose of cooperating with federal, state and local public agencies for the further development of local and regional water, wastewater and storm water services within the Gulf Coast Region. In addition to the powers over water, wastewater and storm water, the Harrison County Utility Authority is granted power over solid waste within its jurisdiction.

SOURCES: Laws, 2006, ch. 546, § 20, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-741. Board of directors, officers, compensation.

(1) The board of directors of a county authority shall elect annually from its number a president and vice president of the county authority and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the authority and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall act in the absence or disability of the president. Each board also shall appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices. The treasurer shall give bond in the sum of not less than One Hundred Thousand Dollars ($100,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Twenty-five Thousand Dollars ($25,000.00), with sureties qualified to do business in this state, and the premiums on the bonds shall be an expense of the authority. Each bond shall be payable to the State of Mississippi, and the condition of each bond shall be that the treasurer and director will faithfully perform all duties of his office and account for all money and other assets which shall come into his custody as treasurer or director of the authority.

(2) Each director of a county authority shall serve without salary, but shall be entitled to receive per diem pay as provided for in Section 25-3-69 and shall be reimbursed his actual necessary expenses, as provided in Section 25-3-41, incurred while in the performance of his duties as a member of the board of directors of the authority upon authorization by the board. Expenses shall be paid from available funds of the authority.

(3) All business of a county authority shall be transacted by a majority vote of the total membership of the board of directors. The quorum for any meeting of the board of directors shall be a majority of the total membership of the board of directors.

SOURCES: Laws, 2006, ch. 546, § 21, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-743. Powers of the county authorities.

From and after April 18, 2006, each and every county authority shall have, in addition to any other powers granted under any other provision of law, including, but not limited to, the following:

(a) To acquire, construct, improve, enlarge, extend, repair, operate and maintain one or more of its systems used for the collection, transportation, treatment and disposal of water, wastewater and storm water;

(b) To make contracts with any person in furtherance thereof; and to make contracts with any person, under the terms of which the county authority will collect, transport, treat or dispose of water, wastewater and storm water for such person;

(c) To make contracts with any person to design and construct any water, wastewater and storm water systems or facilities, and thereafter to purchase, lease or sell, by installments over such terms as may be deemed desirable, reasonable and necessary, or otherwise, any such system or systems;

(d) To enter into operating agreements with any person, for such terms and upon such conditions as may be deemed desirable, for the operation of any water, wastewater and storm water systems; and the county authority may lease to or from any person, for such term and upon such conditions as may be deemed desirable, any water, wastewater and storm water collection, transportation, treatment or its other facilities or systems. Any such contract may contain provisions requiring any public agency or other person to regulate the quality and strength of materials to be handled by the respective system or systems and also may provide that the county authority shall have the right to use any streets, alleys and public ways and places within the jurisdiction of a public agency or other person during the term of the contract;

(e) To enter into contracts with any person or any public agency, including, but not limited to, contracts authorized by this act, in furtherance of any of the purposes authorized under this act upon such consideration as the board of directors and such person may agree. Any such contract may extend over any period of time, notwithstanding any provision or rule of law to the contrary; may be upon such terms and for such consideration, nominal or otherwise, as the parties thereto shall agree; and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds, and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties thereto according to its terms;

(f) To adopt an official seal and alter the same at pleasure;

(g) To sue and be sued, in its own name, and to enjoy all of the protections, immunities and benefits provided by the Mississippi Tort Claims Act, as it may be amended or supplemented from time to time;

(h) To maintain office space at such place or places within the county authority boundaries as it may determine;

(i) To invest money of the county authority, including proceeds from the sale of any bonds subject to any agreements with bondholders, on such terms and in such manner as the county authority deems proper;

(j) To require the necessary relocation or rerouting of roads and highways, railroad, telephone and telegraph lines, and properties, electric power lines, gas pipelines and related facilities, or to require the anchoring or other protection of any of these, provided fair compensation is first paid to the owners or an agreement with such owners regarding the payment of the cost of such relocation, and to acquire easements or rights-of-way for such relocation or rerouting and to convey the same to the owners of the property being relocated or rerouted in connection with the purposes of this act;

(k) To acquire, construct, improve or modify, to operate or cause to be operated and maintained, either as owner of all or of any part in common with others, any water, wastewater or storm water system within the county authority's service area. The county authority may pay all or part of the cost of any system from any contribution by persons, firms, public agencies or corporations. The county authority may receive, accept and use all funds, public or private, and pay all costs of the development, implementation and maintenance as may be determined as necessary for any project;

(*l*) To acquire, in its own name, by purchase on any terms and conditions and in any manner as it may deem proper, including by eminent domain, property for public use, or by gift, grant, lease, or otherwise, real property or easements therein, franchises and personal property necessary or convenient for its corporate purposes;

(m) To acquire insurance for the county authority's systems, facilities, buildings, treatment plants and all property, real or personal, to insure against all risks as any insurance may, from time to time, be available;

(n) To use any property and rent or lease any property to or from others, including public agencies, or make contracts for the use of the property. The county authority may sell, lease, exchange, transfer, assign, pledge, mortgage or grant a security interest for any property. The powers to acquire, use and dispose of property as set forth in this paragraph shall include the power to acquire, use and dispose of any interest in that property, whether divided or undivided. Title to any property of the county authority shall be held by the county authority exclusively for the benefit of the public;

(o) To apply, contract for, accept, receive and administer gifts, grants, appropriations and donations of money, materials and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, district or instrumentality of any of the foregoing, upon any terms and conditions as the United States, the state, a unit of local government, or any agency, department, district or instrumentality shall impose. The county authority may administer trusts. The county authority may sell, lease, transfer, convey, appropriate and pledge any and all of its property and assets;

(p) To make and enforce, and from time to time amend and repeal, bylaws, rules, ordinances and regulations for the management of its business and affairs and for the construction, use, maintenance and operation of any of the systems under its management and control;

(q) To employ and terminate staff and other personnel, including attorneys, engineers and consultants as may be necessary to the functioning of the county authority. The board of directors, in its discretion, may employ an executive director having the authority to employ and fire employees and other duties as determined by the board;

(r) To establish and maintain rates, fees and any other charges for services and the use of systems and facilities within the control of the county authority, and from time to time, to adjust such rates, fees and any other charges to the end that the revenues therefrom will be sufficient at all times to pay the expenses of operating and maintaining of the facilities and treatment systems and all of the persons' obligations under any contract or bonds resolution with respect thereto or any obligation of any person under any agreement, contract, indenture or bonds resolution with respect thereto. Such rates, fees, assessments and any other charges shall not be subject to the jurisdiction of the Mississippi Public Service Commission;

(s) To adopt rules and regulations necessary to accomplish the purposes of the county authority and to assure the payment of each participating person or public agency of its proportionate share of the costs for use of any of the systems and facilities of the county authority and for the county authority's proportionate share of the costs of the utility board;

(t) To enter on public or private lands, waters or premises for the purpose of making surveys, borings or soundings, or conducting tests, examinations or inspections for the purposes of the authority, subject to responsibility for any damage done to property entered;

(u) To accept industrial wastewater from within the boundaries of the county authority for treatment and to require the pretreatment of same when, in the opinion of the county authority, such pretreatment is necessary;

(v) To control and operate local retail water, wastewater and storm water services, and may provide or be responsible for direct servicing of those services to residences, businesses and individuals; however, the county authority shall not provide the same services in an area provided by a public utility or person holding a certificate of public convenience and necessity issued by the Mississippi Public Service Commission for the provision of such services in the certificated area. Any rates, fees, assessments or other charges shall not be under the control or regulation of the Mississippi Public Service Commission;

(w) To assume control and administer, within the county authority's jurisdiction, any water, wastewater or storm water system or systems by agreement or contract with any person if the person providing such services requests to be relieved of that responsibility. However, the person may maintain control over connections in their service areas and may charge rates, fees and any other charges in addition to the rates, fees and any charges of the county authority;

(x) The county authority shall have the power of eminent domain for the particular purpose of the acquisition of property designated by plan to sufficiently accommodate the location of water, wastewater or storm water systems and such requirements related directly thereto pursuant to the provisions of Chapter 27, Title 11, Mississippi Code of 1972. The county authority may acquire by eminent domain property necessary for any system and the exercise of the powers, rights and duties conferred upon the county authority by this act. No person owning the drilling rights or the right to share in production shall be prevented from exploring, developing or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting such interests on any lands or interest of the county authority held or used for the purposes of this act, but any such activities shall be subject to reasonable regulations by the board of directors that will adequately protect the systems or projects of the county authority;

(y) To use any legally available funds to acquire, rebuild, operate and maintain any existing water, wastewater or storm water systems owned or operated by any person;

(z) To refuse to receive water, wastewater or storm water from any public agency or person; and

(aa) So long as any indebtedness on the systems of the county authority remains outstanding, to require by contract with a member public agency, or other person, that all water, wastewater and storm water within the boundaries of the respective county authority be disposed of through the appropriate treatment system to the extent that the same may be available, but no public agency shall be precluded from constructing, operating and maintaining its own such system after the current indebtedness owing on the system as of April 18, 2006, is paid in full.

SOURCES: Laws, 2006, ch. 546, § 22, eff from and after passage (approved Apr. 18, 2006.)

Cross References — Mississippi Tort Claims Act, see generally §§ 11-46-1 et seq.
Mississippi Public Service Commission, see §§ 77-1-1 et seq.

ATTORNEY GENERAL OPINIONS

A county utility authority may not require individuals with private residences to connect to the authority's central water supply or central sewer supply in areas already certificated by the Public Service Commission for the same type of service. Heidelberg, Sept. 29, 2006, A.G. Op. 06-0403.

Because the Public Service Commission does not issue certificates of public convenience and necessity with respect to provision of storm water services, a county utility authority should take those lawful measures it deems necessary to carry out its required storm water service duties. Heidelberg, Sept. 29, 2006, A.G. Op. 06-0403.

No specific authority can be found for a county utility authority to require persons living in a public service commission certificated area to "tie into" the system operated by the public service commission franchisee. Heidelberg, Nov. 17, 2006, A.G. Op. 06-0555.

§ 49-17-745. Promulgation of rules and regulations relating to construction, operation and maintenance of any water, wastewater and storm water systems within each county authority's service area.

(1) The county authority shall have the power, duty and responsibility to exercise general supervision over the design, construction, operation and maintenance of water, wastewater and storm water systems.

(2) The county authority shall adopt rules and regulations regarding the design, construction or installation, operation and maintenance of water, wastewater and storm water systems.

(3) The county authority shall adopt rules and regulations regarding the use of decentralized treatment systems, individual on-site wastewater treatment systems and centralized wastewater treatment systems.

(4) The county authority shall adopt rules establishing performance standards for water, wastewater and storm water systems and the operation and maintenance of the same. Such rules and regulations shall include the implementation of a standard application form for the installation, operation and maintenance of such systems; application review; approval or denial procedures for any proposed system; inspection, monitoring and reporting guidelines; and enforcement procedures.

(5)(a) Before a building or development which requires the installation of a water, wastewater or storm water system is constructed, the system must be submitted to the county authority for certification that the system complies with the county authority requirements for such system.

(b) Before approving or renewing a water, wastewater or storm water related permit for a system within a county authority, the state agency must require certification that the system complies with the requirements of the county authority.

(6) Any system of any municipality, public agency or other persons which contracts with a county authority, shall be subject to the terms of that contract and the terms of this act.

(7) Notwithstanding the provisions of Section 51-39-1 et seq., the county authority shall have the full power to adopt rules and regulations and to construct, maintain and operate facilities for the control of storm water quality and quantity. In addition, the provisions of Section 51-33-1 et seq. relating to drainage districts and flood control districts do not apply to the county authority.

(8) The county authority may control and operate the local retail water, wastewater or storm water services and may provide or be responsible for direct servicing of those services to residences, businesses and individuals; however, the county authority shall not provide the same service in an area provided by a public utility or person holding a certificate of public convenience and necessity issued by the Mississippi Public Service Commission for the provision of such services in the certificated area.

SOURCES: Laws, 2006, ch. 546, § 23; Laws, 2009, ch. 494, § 5, eff from and after July 1, 2009.

Cross References — Mississippi Public Service Commission, see §§ 77-1-1 et seq.

ATTORNEY GENERAL OPINIONS

A county utility authority may not require individuals with private residences to connect to the authority's central water supply or central sewer supply in areas already certificated by the Public Service Commission for the same type of service. Heidelberg, Sept. 29, 2006, A.G. Op. 06-0403.

Because the Public Service Commission does not issue certificates of public convenience and necessity with respect to provision of storm water services, a county utility authority should take those lawful measures it deems necessary to carry out its required storm water service duties. Heidelberg, Sept. 29, 2006, A.G. Op. 06-0403.

While the power given the county authorities in the Mississippi Gulf Coast Region Utility Act does not supersede the authority of the State Health Department or the Department of Environmental Quality, it does authorize said authorities to impose additional requirements over and above what the state agencies may require on the construction of buildings or developments which require the installation of a water, wastewater or storm water system. Frierson, Oct. 6, 2006, A.G. Op. 06-0465.

A review of the language in Section 49-17-745 reveals no authority for a county utility authority to impose its jurisdiction upon rural utility districts which are not connected with the county authority. Ellington, Nov. 10, 2006, A.G. Op. 06-0556.

No specific authority can be found for a county utility authority to require persons living in a public service commission certificated area to "tie into" the system operated by the public service commission franchisee. Heidelberg, Nov. 17, 2006, A.G. Op. 06-0555.

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

Because the Mississippi Gulf Coast Regional Utility Act expressly applies only to utility systems which are "connected with, or tied into" the systems of a county authority, the determination as to whether a system is covered by the Act is best left to the county authorities, and the Department of Health may not expand the Act to include other systems. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

The Department of Health's current policy of first seeking direction from the county authority before proceeding with approval or renewal of a water, wastewater or storm water system is consistent with, and satisfies the Department's duties under the Mississippi Gulf Coast Regional Utility Act and other state laws. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

§ 49-17-747. Contracts between public agencies or persons and the county authority for provision of water, wastewater and storm water services by the county authority; payment for services and contributions by public agencies.

(1) Any public agency or person, pursuant to a duly adopted resolution of the governing body of such public agency or person, may enter into contracts

with the county authority or county authorities under the terms of which the county authority will manage, operate and contract for usage of its systems and facilities, or other services, for such person or public agency.

(2) Any public agency or person may enter into contracts with the county authority for the county authority to purchase or sell, by installments over such terms as may be deemed desirable, or otherwise, to any person or any systems. Any public agency may sell, donate, convey, or otherwise dispose of water, wastewater and storm water facilities or systems; or any equipment, personal property or any other things, deemed necessary for the construction, operation, and maintenance to the county authority without the necessity of appraisal, advertising, or bidding. This section creates an alternative method of disposal of public property.

(3) Any public agency is authorized to enter into operating agreements with the county authority, for such terms and upon such conditions as may be deemed desirable, for the operation of any of its systems of any person by the county authority or by any person contracting with the county authority to operate such systems.

(4) Any public agency may lease to or from the county authority, for such term and upon such conditions as may be deemed desirable, any of its systems.

(5) Any municipality or county may donate office space, equipment, supplies, and materials to the authority.

(6) Any such contract may contain provisions requiring any public agency or other person to regulate the quality and strength of the material to be handled by the wastewater or storm water systems and may also provide that the county authority shall have the right to use any streets, alleys and public ways and places within the jurisdiction of a public agency or other person during the term of the contract. Such contracts may obligate the public agency to make payments to the county authority or to a trustee in amounts which shall be sufficient to enable the county authority to defray the expenses of administering, operating and maintaining its respective systems, to pay interest and principal (whether at maturity upon redemption or otherwise) on bonds of the county authority, issued under this act and to fund reserves for debt service, for operation and maintenance and for renewals and replacements, to fulfill the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security agreement relating to the bonds of the county authority issued under this act or to fulfill any other requirement relating to bonds issued pursuant to this act.

(7) Any public agency shall have the power to enter into such contracts with the county authority as in the discretion of the governing body of the public agency would be in the best interest of the public agency. Such contracts may include a pledge of the full faith and credit of such public agency and/or the avails of any special assessments made by such public agency against property receiving benefits, as now or hereafter are provided by law. Any such contract may provide for the sale, or lease to, or use of by the county authority, of the systems or any part thereof, of the public agency; and may provide that the county authority shall operate its systems or any part thereof of the public

agency; and may provide that any public agency shall have the right to continued use and/or priority use of the systems or any part thereof during the useful life thereof upon payment of reasonable charges therefor; and may contain provisions to assure equitable treatment of persons or public agencies who contract with the county authority under this act; and may contain such other provisions and requirements as the parties thereto may determine to be appropriate or necessary. Such contracts may extend over any period of time, notwithstanding any provisions of law to the contrary, and may extend beyond the life of the respective systems or any part thereof or the term of the bonds sold with respect to such facilities or improvements thereto.

(8) The obligations of a public agency arising under the terms of any contract referred to in this act, whether or not payable solely from a pledge of revenues, shall not be included within the indebtedness limitations of the public agency for purposes of any constitutional or statutory limitation or provision. To the extent provided in such contract and to the extent such obligations of the public agency are payable wholly or in part from the revenues and other monies derived by the public agency from the operation of its systems or of its combined systems, or any part thereof, such obligations shall be treated as expenses of operating such systems.

(9) Contracts referred to in this section may also provide for payments in the form of contributions to defray the cost of any purpose set forth in the contracts and as advances for the respective systems or any part thereof subject to repayment by the county authority. A public agency may make such contributions or advances from its general fund or surplus fund or from special assessments or from any monies legally available therefor.

(10) Payments made, or to be made, to the county authority by a public agency or other person under a contract for any of its treatment systems, or any part thereof, shall not be subject to approval or review by the Mississippi Public Service Commission.

(11) Subject to the terms of a contract or contracts referred to in this act, the county authority is hereby authorized to do and perform any and all acts or things necessary, convenient or desirable to carry out the purposes of such contracts, including the fixing, charging, collecting, maintaining and revising of rates, fees and other charges for the services rendered to any user of any of the systems operated or maintained by the county authority, whether or not such systems are owned by the county authority.

(12) No provision of this act shall be construed to prohibit any public agency, otherwise permitted by law to issue bonds, from issuing bonds in the manner provided by law for the construction, renovation, repair or development of any of the county authority's systems, or any part thereof, owned or operated by such public agency.

SOURCES: Laws, 2006, ch. 546, § 24, eff from and after passage (approved Apr. 18, 2006.)

Cross References — Mississippi Public Service Commission, see §§ 77-1-1 et seq.

§ 49-17-749. Rates, fees and other charges by public agencies for services provided by county authority.

Whenever a public agency shall have executed a contract under this act and the payments thereunder are to be made either wholly or partly from the revenues of the public agency's systems, or any part thereof, or a combination of such systems, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rate or fees charged by the public agency for the services of such systems, so that the revenues therefrom, together with any taxes and special assessments levied in support thereof, will be sufficient at all times to pay:

(a) The expense of operating and maintaining such systems, including all of the public agency's obligations to the county authority, its successors or assigns under such contract; and

(b) All of the public agency's obligations under and in connection with bonds theretofore issued, or which may be issued thereafter and secured by the revenues of such systems. Any such contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates and fees are to be adjusted.

SOURCES: Laws, 2006, ch. 546, § 25, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-751. Public Service Commission notice.

(1) Notwithstanding the provisions of Sections 77-3-21 and 77-3-23, Mississippi Code of 1972, the certificate of public convenience and necessity held by any municipality, public agency, district, public utility or other person authorized by law to provide water, sewer and wastewater services may be cancelled and its powers, duties and responsibilities transferred to the county authority in the manner provided by this section.

(2) Any entity described in subsection (1) of this section desiring to have its certificate of public convenience and necessity cancelled and its powers, duties and responsibilities transferred to the county authority shall make a determination to that effect on its official minutes if a public entity, or by affidavit if not a public entity, and transmit such determination to the county authority.

(3) Upon receipt of the document evidencing such determination from an entity to transfer its powers, duties and responsibilities to the county authority, the county authority shall, by resolution, declare whether it is willing and able to accept such transfer from the entity.

(4) Upon completion of the requirements of subsections (2) and (3) herein and agreement by both parties to the transfer, the holder of the certificate of public convenience and necessity and the county authority shall jointly petition the Public Service Commission to cancel the certificate of public convenience and necessity. The petition must be accompanied by copies of the official minutes, affidavit or resolution, as the case may be, reflecting the

actions of the petitioners. After review of the petition and any other evidence as the Public Service Commission deems necessary, the commission may issue an order canceling the certificate and transferring to the county authority the powers, duties and responsibilities granted by the certificate, including all assets and debts of the transferor petitioner related to such certificated services, real or personal, or both, if it finds that:

(a) Subsections (2) and (3) of this section have been complied with; and

(b) Such action is in the public interest.

(5) The county authority and providers of water, sewer, wastewater and storm water services that are not holders of a certificate of a public convenience and necessity from the Public Service Commission may enter into agreements for the provision of such services, including, but not limited to, the transfer to the county authority of such provider's powers, duties, responsibilities, assets and debts.

SOURCES: Laws, 2006, ch. 546, § 26, eff from and after passage (approved Apr. 18, 2006.)

Cross References — Mississippi Public Service Commission, see §§ 77-1-1 et seq.

§ 49-17-753. Validation of prior indebtedness.

(1) Any system of a municipality, public agency or person that becomes subject to the jurisdiction of a county authority and this act shall not impair, invalidate or abrogate any liens, bonds or other certificates of indebtedness related to water, storm water or wastewater facilities and systems incurred prior to becoming subject to the jurisdiction of the county authority.

(2) The county authority may do and perform any and all acts necessary, convenient or desirable to ensure the payment, redemption or satisfaction of such liens, bonds or other certificates of indebtedness.

SOURCES: Laws, 2006, ch. 546, § 27, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-755. The power to borrow money and to issue revenue bonds.

(1) Sections 49-17-753 through 49-17-771 apply to all bonds to be issued after April 18, 2006, and such provisions shall not affect, limit or alter the rights and powers of any county authority under this act or any law of Mississippi to conduct the activities referred to herein in any way pertinent to the interests of the bondholders, including, without limitation, such county authority's right to charge and collect rates, fees and charges and to fulfill the terms of any covenants made with the registered owners of any existing bonds, or in any other way impair the rights and remedies of the registered owners of any existing bonds, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security interest securing the bonds.

(2) The county authority shall have the power and is hereby authorized, from time to time, to borrow money and to issue revenue bonds and interim notes in such principal amounts as the county authority may determine to be necessary to provide sufficient funds for achieving one or more of the purposes of this act, including, without limiting the generality of the foregoing, to defray all the costs of the project, the cost of the acquisition, construction, improvement, repair or extension of a system, or any part thereof, whether or not such facilities are owned by the county authority, the payment of interest on bonds of the county authority issued pursuant to this act, establishment of reserves to secure such bonds and payment of the interest thereon, expenses incident to the issuance of such bonds and to the implementation of the county authority's system, and all other expenditures of the county authority incident to or necessary or convenient to carry out the purposes of this act.

(3) Before issuing bonds, other than interim notes or refunding bonds as provided in Section 49-17-757, the board of directors of the county authority shall adopt a resolution declaring its intention to issue such bonds and stating the maximum principal amount of bonds proposed to be issued, a general generic description of the proposed improvements and the proposed location thereof and the date, time and place at which the board of directors proposes to take further action with respect to the issuance of such bonds. The resolution of the county authority shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper having a general circulation within the geographical limits of all of the public agencies which have contracted with the county authority pursuant to this act.

(4) Bonds of the county authority issued pursuant to this act shall be payable from and secured by a pledge of all or any part of the revenues under one or more contracts entered into pursuant to this act between the county authority and one or more of its contracting public agencies and from all or any part of the revenues derived from the operation of any designated system or any part or parts thereof and any other monies legally available and designated therefor, as may be determined by such county authority, subject only to any agreement with the purchasers of the bonds. Such bonds may be further secured by a trust indenture between such county authority and a corporate trustee, which may be any trust company or bank having powers of a trust company without or within the state.

(5) Bonds of the county authority issued pursuant to this act shall be authorized by a resolution or resolutions adopted by a majority affirmative vote of the total membership of the board of directors of the county authority. Such bonds may be issued in series, and each series of such bonds shall bear such date or dates, mature at such time or times, bear interest at such rate or rates (not exceeding the maximum rate set out in Section 75-17-103, Mississippi Code of 1972), be in such denomination or denominations, be in such form, carry such conversion privileges, have such rank or priority, be executed in such manner and by such officers, be payable from such sources in such medium of payment at such place or places within or without the state, provided that one such place shall be within the state, and be subject to such

terms of redemption prior to maturity, all as may be provided by resolution or resolutions of the board of directors. The term of such bonds issued pursuant to this act shall not exceed forty (40) years.

(6) Bonds of the county authority issued pursuant to this act may be sold at such price or prices, at public or private sale, in such manner and at such times as may be determined by such county authority to be in the public interest, and such county authority may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof.

(7) Any pledge of earnings, revenues or other monies made by the county authority shall be valid and binding from the time the pledge is made. The earnings, revenues or other monies so pledged and thereafter received by such county authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against such county authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(8) Neither the members of the board of directors nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(9) Proceeds from the sale of bonds of the county authority may be invested, pending their use, in such securities as may be specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them, and the earnings on such investments applied as provided in such resolution or trust indenture.

(10) Whenever any bonds shall have been signed by the officer(s) designated by the resolution of the board of directors to sign the bonds who were in office at the time of such signing but who may have ceased to be such officer(s) prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the manual or facsimile signatures of such officer(s) upon such bonds shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially executing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

(11) The county authority has the discretion to advance or borrow funds needed to satisfy any short-term cash flow demands or deficiencies or to cover start-up costs until such time as sufficient bonds, assets and revenues have been secured to satisfy the needs of the county authority.

SOURCES: Laws, 2006, ch. 546, § 28, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-757. Bonds of county authority.

(1) **Refunding bonds.** — The county authority may, by resolution adopted by its board of directors, issue refunding bonds for the purpose of

paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of directors deems to be in the public interest, without an election on the question of the issuance thereof. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the county authority in respect of the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable. Any such refunding may be effected, whether the obligations to be refunded shall have then matured or shall thereafter mature, either by the exchange of the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, or by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations proposed to be refunded thereby, and regardless of whether the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

(2) **Interim notes.** — Borrowing by the county authority may be made by the delivery of interim notes to any person or public agency or financial institution by a majority vote of the board of directors.

SOURCES: Laws, 2006, ch. 546, § 29, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-759. Validation of bonds.

All bonds (other than refunding bonds, interim notes and certificates of indebtedness, which may be validated) issued pursuant to this act shall be validated as now provided by law in Sections 31-13-1 through 31-13-11, Mississippi Code of 1972; however, notice of such validation proceedings shall be addressed to the citizens of the respective public agencies (a) which have contracted with the county authority pursuant to this act, and (b) whose contracts and the payments to be made by the public agencies thereunder constitute security for the bonds of such county authority proposed to be issued, and that such notice shall be published at least once in a newspaper or newspapers having a general circulation within the geographical boundaries of each of the contracting public agencies to whose citizens the notice is addressed. Such validation proceedings shall be instituted in any chancery courts within the boundaries of the county authority. The validity of the bonds so validated and of the contracts and payments to be made by the public agencies thereunder constituting security for the bonds shall be forever conclusive against the county authority and the public agencies which are parties to said contracts; and the validity of said bonds and said contracts and the payments to be made thereunder shall never be called in question in any court in this state.

SOURCES: Laws, 2006, ch. 546, § 30, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-761. Payment of bonds.

Bonds issued under the provisions of this act shall not be deemed to constitute, within the meaning of any constitutional or statutory limitation, an indebtedness of the county authority. Such bonds shall be payable solely from the revenues or assets of the county authority pledged therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that such county authority shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor.

SOURCES: Laws, 2006, ch. 546, § 31, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-763. Powers of county authority in connection with issuance of bonds.

The county authority shall have power in connection with the issuance of its bonds pursuant to this act to:

(a) Covenant as to the use of any or all of its property, real or personal;

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof;

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements, principal and debt service on bonds, creation and maintenance of any reserves required by a bonds resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds;

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of the registered owners of the bonds;

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any designated system or any part thereof or any revenue-producing contract or contracts made by a county authority with any person to secure the payment of bonds, subject to such agreements with the registered owners of bonds as may then exist;

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, monies, funds or property with respect to which a county authority may have any rights or interest;

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds;

(h) Covenant as to the limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security;

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the registered owners of bonds may be amended or abrogated, the amount of bonds the registered owners of which must consent thereto, and the manner in which such consent may be given;

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(*l*) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers and duties in trust as such county authority may determine;

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the county authority tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give any county authority power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the Constitution of the state; and

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the county authority may reasonably require.

SOURCES: Laws, 2006, ch. 546, § 32, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-765. Appointment of trustee to represent bond owners; appointment of receiver.

The county authority may, in any authorizing resolution of the board of directors, trust indenture or other security instrument relating to its bonds issued pursuant to this act, provide for the appointment of a trustee who shall have such powers as are provided therein to represent the registered owners of any issue of bonds in the enforcement or protection of their rights under any such resolution, trust indenture or security instrument. The county authority may also provide in such resolution, trust indenture or other security instrument that the trustee, or in the event that the trustee so appointed shall fail or decline to so protect and enforce such registered owners' rights then such percentage of registered owners as shall be set forth in, and subject to the provisions of, such resolution, trust indenture or other security interest, may petition the court of proper jurisdiction for the appointment of a receiver of the county authority's systems, the revenues of which are pledged to the payment of the principal of and interest on the bonds of such registered owners. Such receiver may exercise any power as may be granted in any such resolution, trust indenture or security instrument to enter upon and take possession of, acquire, construct or reconstruct or operate and maintain such system, fix charges for services of the system and enforce collection thereof, and receive all revenues derived from such system or facilities and perform the public duties and carry out the contracts and obligations of such county authority in the same manner as such county authority itself might do, all under the direction of such court.

SOURCES: Laws, 2006, ch. 546, § 33, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-767. Exemption of county authority from taxes and fees; bonds to be free from taxation; exceptions.

(1) The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for their well-being and prosperity and for the improvement of their social and economic conditions, and the county authority shall not be required to pay any tax or assessment on any property owned by the county authority under the provisions of this act or upon the income therefrom; nor shall the county authority be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf.

(2) Any bonds issued by the county authority under and pursuant to the provisions of this act, their transfer and the income therefrom shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

SOURCES: Laws, 2006, ch. 546, § 34, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-769. Bonds as legal investments and securities.

All bonds issued under the provisions of this act shall be legal investments for trustees, other fiduciaries, savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi; and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities and other political subdivisions thereof for the purpose of securing the deposit of public funds.

SOURCES: Laws, 2006, ch. 546, § 35, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-771. Rights and powers of county authority to remain unchanged while bonds are outstanding and unpaid.

The state hereby covenants with the registered owners of any bonds of any county authority that so long as the bonds are outstanding and unpaid the state will not limit or alter the rights and powers of any county authority under this act to conduct the activities referred to herein in any way pertinent to the interests of the bondholders, including, without limitation, such county authority's right to charge and collect rates, fees, assessments and charges and to fulfill the terms of any covenants made with the registered owners of the bonds, or in any other way impair the rights and remedies of the registered owners of the bonds, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security interest securing the bonds.

SOURCES: Laws, 2006, ch. 546, § 36, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-773. Advance of funds or issuance of notes authorized; terms and conditions.

For the purposes of satisfying any temporary cash flow demands and deficiencies, and to maintain a working balance for the county authority, the county, municipalities or public agencies within the geographic boundaries of the county authority, or other persons, subject to their lawful authority to do so, are authorized to advance, at any time, such funds which, in its discretion, are necessary, or borrow such funds by issuance of notes, for initial capital contribution and to cover start-up costs until such times as sufficient bonds, assets and revenues have been secured to satisfy the needs of the county authority for its management, operation and formation. To this end, the county, municipality, public agency or person, subject to their lawful authority to do so, shall advance such funds, or borrow such funds by issuance of notes, under such terms and conditions as may be provided by resolution of the governing body, or other persons as defined in this act, subject to their lawful authority to do so, except that each such resolution shall state:

(a) The need for the proceeds advanced or borrowed;

(b) The amount to be advanced or the amount to be borrowed;

(c) The maximum principal amount of any note issued the interest rate or maximum interest rate to be incurred, and the maturity date of said note;

(d) In addition, the governing body, or other persons as defined in this act, subject to their lawful authority to do so, may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on a line of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness and contain such terms and conditions as the governing body, or other persons as defined in this act, subject to their lawful authority to do so, may authorize in the resolution approving the same;

(e) The governing body of the county, municipalities or other persons as defined in this act, subject to their lawful authority to do so, may authorize the repayment of such advances, notes, lines of credit and other debt incurred under this section, along with all costs associated with the same, including, but not limited to, rating agency fees, printing costs, legal fees, bank or trust company fees, line of credit fees and other charges to be reimbursed by the county authority under such terms and conditions as are reasonable and are to be provided for by resolution of the governing body, or terms agreed upon with other persons as defined in this act, subject to their lawful authority to do so;

(f) In addition, the governing body of the county, municipality or public agency may lease or donate office space and equipment to the county authority under such terms and conditions as are reasonable and are to be provided for by resolution of the governing body, or terms agreed upon by the county authority.

SOURCES: Laws, 2006, ch. 546, § 37, eff from and after passage (approved Apr. 18, 2006.)

§ 49-17-775. Severability of provisions.

If any clause, sentence, paragraph, section or part of the provisions of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof directly involved in the controversy in which such judgment shall have been rendered.

SOURCES: Laws, 2006, ch. 546, § 38, eff from and after passage (approved Apr. 18, 2006.)

ATTORNEY GENERAL OPINIONS

Because the Mississippi Gulf Coast Regional Utility Act expressly applies only to utility systems which are "connected with, or tied into" the systems of a county authority, the determination as to whether a system is covered by the Act is best left to the county authorities, and the Department of Health may not expand the Act to include other systems. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

The Department of Health's current policy of first seeking direction from the county authority before proceeding with approval or renewal of a water, wastewater or storm water system is consistent with, and satisfies the Department's duties under the Mississippi Gulf Coast Regional Utility Act and other state laws. Amy, March 30, 2007, A.G. Op. #07-00139, 2007 Miss. AG LEXIS 70.

CHAPTER 18

Mississippi Liability of Persons Responding to Oil Spills Act

Sec.

49-18-1. Short title.
49-18-3. Definitions.
49-18-5. Liability of persons for oil spill response consistent with National Contingency Plan or on-scene directions.

§ 49-18-1. Short title.

This chapter may be cited as the Mississippi Liability of Persons Responding to Oil Spills Act.

SOURCES: Laws, 1991, ch. 582, § 1, eff from and after passage (approved April 12, 1991).

Cross References — Water pollution control generally, see §§ 49-17-1 et seq.

RESEARCH REFERENCES

Law Reviews. Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

§ 49-18-3. Definitions.

For the purposes of this chapter the term:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil;

(b) "Discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(c) "Federal on-scene coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

(d) "National Contingency Plan" means the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act (33 USCS 1321(d)), as amended by the Oil Pollution Act of 1990, Pub.L. No. 101-380, 104 Stat. 484 (1990);

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil; but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS 9601) and which is subject to the provisions of that act;

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body;

(g) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident;

(h) "Responsible party" means a responsible party as defined under Section 1001 of the Oil Pollution Act of 1990, Pub.L. No. 101-380, 104 Stat. 484 (1990).

SOURCES: Laws, 1991, ch. 582, § 2, eff from and after passage (approved April 12, 1991).

Federal Aspects — The Federal Water Pollution Control Act is codified at 33 USCS §§ 1251 et seq.

The Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, appears generally as 33 U.S.C. § 2701 et seq.

The Comprehensive Environmental Response, Compensation and Liability Act is codified at 42 USCS §§ 9601 et seq.

§ 49-18-5. Liability of persons for oil spill response consistent with National Contingency Plan or on-scene directions.

(1) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response.

(2) Subsection (1) does not apply:

(a) To a responsible party;

(b) To personal injury or wrongful death; or

(c) If the person is grossly negligent or engages in willful misconduct.

(3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1).

(4) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

SOURCES: Laws, 1991, ch. 582, § 3, eff from and after passage (approved April 12, 1991).

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Forms 11 et seq.

CJS. 93 C.J.S., Waters §§ 105, 106.

CHAPTER 19

Forests and Forest Protection

In General 49-19-1
Forest Harvesting 49-19-51
Forestry Education, Timber Management and Forest Fire Control 49-19-111
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IN GENERAL

Sec.
49-19-1. State forestry commission; membership; compensation; organization.
49-19-3. Selection and qualifications of state forester; other duties and powers of the commission [Paragraph (j) repealed effective June 30, 2014].
49-19-5. Acquisition and disposal of property.
49-19-7. Control pine beetle epidemics and other timber insects and pests.
49-19-9. Fire protection services for Choctaw Indian lands.
49-19-11. Land adjacent to protective areas, etc.
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49-19-17. Study of forestry in schools and colleges.
49-19-19. Free commercial tree seedlings for farm owners and schools.
49-19-21. How moneys contributed by government spent.
49-19-23. Federal funds; apportionment.
49-19-25. Fires declared nuisances; abandoned open cisterns and wells declared nuisances; abatement.
49-19-27. Tree Seedling Revolving Fund; reforestation.
49-19-29. Repealed.
49-19-31. Joint Study Committee on Forestry.
49-19-33. Southern Regional Fire Training Center renamed the Richard (Dick) Allen Building.

§ 49-19-1. State forestry commission; membership; compensation; organization.

(1) There shall be a State Forestry Commission composed of ten (10) members, who shall be qualified electors of the state. The Dean of the School of Forest Resources at Mississippi State University shall be an ex officio member of the commission, with full voting authority. The chairman of the advisory committee to the Mississippi Institute for Forest Inventory shall be an ex officio nonvoting member of the commission. The Governor shall appoint eight (8) members, with the advice and consent of the Senate, for a term of six (6) years. The Governor shall appoint one (1) member from each congressional district as constituted at the time the appointments are made and shall appoint the remainder of the members from the state at large. A member from a congressional district must be a certified tree farmer who owns eighty (80) or

more acres of forest land or a person who derives a major portion of his personal income from forest-related business, industry or other related activities. Members of the commission from the state at large may or may not possess the same qualifications as members appointed from the congressional districts.

(2) The members of the commission shall receive no annual salary but each member of the commission shall receive a per diem plus expenses and mileage as authorized by law for each day devoted to the discharge of official duties. No member of the commission shall receive total per diem in excess of twenty-four (24) days' compensation per annum.

(3) If a vacancy occurs in the office of an appointed member of the commission, the vacancy shall be filled by appointment for the balance of the unexpired term.

(4) The commission shall elect from its membership a chairman, who shall preside over meetings, and a vice chairman, who shall preside in the absence of the chairman or when the chairman is excused.

(5) The commission shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Each member of the commission shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and shall enter into bond in the amount of Thirty Thousand Dollars ($30,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi before assuming the duties of office.

(6) Any appointment made to the commission contrary to this section shall be void, and it is unlawful for the State Fiscal Officer to pay any per diem or authorize the expenses of the appointee.

SOURCES: Codes, 1930, § 6164; 1942, § 6022; Laws, 1926, ch. 161; Laws, 1964, ch. 241, §§ 1, 2; Laws, 1966, ch. 276, § 1; Laws, 1973, ch. 359, § 1; Laws, 1980, ch. 560, § 24; Laws, 1981, ch. 305, § 1; Laws, 1997, ch. 597, § 1; Laws, 2006, ch. 571, § 3, eff from and after July 1, 2006.

Editor's Note — Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Mileage and other travel expenses of state officers and employees, see § 25-3-41.

Uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Conservation and reforestation in Tombigbee River Valley Water Management District, see § 51-13-111.

Surface mining and reclamation of land, see §§ 53-7-1 et seq.

Survey and study of use of state land, see § 55-3-5.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 15.

§ 49-19-3. Selection and qualifications of state forester; other duties and powers of the commission [Paragraph (j) repealed effective June 30, 2014].

The duties and powers of the commission shall be:

(a) To appoint a State Forester, who shall serve at the will and pleasure of the commission and who is qualified to perform the duties as set forth herein; and to pay him such salary as is provided by the Legislature, and allow him such office expenses incidental to the performance of his official duties as the commission, in its discretion, may deem necessary; and to charge him with the immediate direction and control, subject to the supervision and approval of the commission, of all matters relating to forestry as authorized herein. Any person appointed by the commission as State Forester shall have received a bachelor's degree in forestry from an accredited school or college of forestry and shall be licensed and registered under the provisions of the Mississippi Foresters Registration Law (Section 73-36-1 et seq.) and in addition shall have had at least five (5) years' administrative experience in a forestry-related field.

(b) To take such action and provide and maintain such organized means as may seem necessary and expedient to prevent, control and extinguish forest fires, including the enforcement of any and all laws pertaining to the protection of forests and woodland.

(c) To encourage forest and tree planting for the production of a wood crop, for the protection of water supply, for windbreak and shade, or for any other beneficial purposes contributing to the general welfare, public hygiene and comfort of the people.

(d) To cause to be made such technical investigations and studies concerning forest conditions, the propagation, care and protection of forest and shade trees, the care and management of forests, their growth, yield and the products and by-products thereof, and any other competent subject, including forest taxation, bearing on the timber supply and needs of the state, which the commission, in its discretion, may deem proper.

(e) To assist and cooperate with any federal or state department or institution, county, town, corporation or individual, under such terms as in the judgment of the commission will best serve the public interest, in the preparation and execution of plans for the protection, management, replacement, or extension of the forest, woodland and roadside or other ornamental tree growth in the state.

(f) To encourage public interest in forestry by means of correspondence, the public press, periodicals, the publication of bulletins and leaflets for general distribution, the delivery of lectures in the schools and other suitable means, and to cooperate to the fullest extent with the extension department services of the state colleges in promoting reforestation. It shall be the duty of the State Forester to cooperate with private timber owners in laying plans for the protection, management and replacement of forests and in aiding them to form protection associations. It shall be his duty to examine all timbered lands belonging to the state and its institutions and report to the commission upon their timber conditions and actual value, and also whether some of these lands may not be held as state forests. He shall be responsible for the protection and management of lands donated, purchased or belonging to the state or state institutions, and all other lands reserved by the state as state forests.

(g) To control the expenditure of any and all funds appropriated or otherwise made available for the several purposes set forth herein under suitable regulations and restrictions by the commission and to specifically authorize any officer or employee of the commission to incur necessary and stipulated expenses in connection with the work in which such person may be engaged.

(h) To submit annually to the Legislature a report of the expenditures, proceedings and results achieved, together with such other matters including recommendations concerning legislation as are germane to the aims and purposes of this chapter.

(i) To create, establish and organize the State of Mississippi into forestry districts for the most effective and efficient administration of the commission.

(j) **(Repealed effective June 30, 2014)** To appoint, upon the State Forester's recommendation, six (6) individuals who shall be designated Mississippi Forestry Commission Law Enforcement Officers with authority to bear arms, investigate and make arrests; however, the law enforcement duties and authority of the officers shall be limited to woods arson. The officers shall comply with applicable minimum educational and training standards for law enforcement officers. These officers may issue citations for any violation of those laws for recklessly or with gross negligence causing fire to burn the lands of another. A citation issued by a Forestry Commission law enforcement officer shall be issued on a uniform citation form consisting of an original and at least two (2) copies. Such citation shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard and the date and time the person charged with a violation is to appear to answer the charge. The uniform citation form shall make a provision on it for information that will constitute a complaint charging the offense for which the citation was issued and, when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed under that complaint. For the purposes of this paragraph, the fact that any person is found to have a brush or debris pile or other material which is or was being burned and reasonable and prudent efforts were not taken to prevent the spread of the fire onto the lands of another shall be evidence that such person recklessly or with gross negligence caused the land to burn.

This paragraph shall stand repealed on June 30, 2014.

(k) To discharge such duties, responsibilities and powers necessary to accomplish and implement the Forestry Inventory and Strategic Planning Act under Section 49-19-401 et seq.

SOURCES: Codes, 1930, § 6165; 1942, § 6023; Laws, 1926, ch. 161; Laws, 1950, ch. 224; Laws, 1954, ch. 186; Laws, 1958, chs. 192, 341; Laws, 1966, ch. 445, § 15; Laws, 1970, ch. 296, § 1; Laws, 1981, ch. 305, § 2; Laws, 1996, ch. 329, § 1; Laws, 2000, ch. 546, § 1; Laws, 2003, ch. 523, § 1; Laws, 2005, ch. 495, § 1; Laws, 2006, ch. 332, § 1; Laws, 2006, ch. 571, § 2; Laws, 2008, ch. 317, § 1; Laws, 2011, ch. 353, § 1, eff from and after passage (approved Mar. 14, 2011.)

Joint Legislative Committee Note — Section 1 of ch. 332, Laws of 2006, effective from and after passage (approved March 9, 2006), amended this section. Section 2 of ch. 571, Laws of 2006, effective from and after July 1, 2006 (approved April 24, 2006), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 571, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2011 amendment extended the repealer provision for paragraph (j) from "June 30, 2011" to "June 30, 2014" in the second paragraph of (j).

Cross References — Charging grand juries with respect to forest fire laws, see § 13-5-47.

Authority to aid in destruction of certain animals for preservation of trees, see § 19-5-51.

Management of forest lands on 16th section school lands, see § 29-3-45.

Management by state forestry commission of growing and cutting of timber on land leased, see § 47-5-56.

Free commercial tree seedlings for farm owners and schools, see § 49-19-19.

Definition and establishment of water rights, see §§ 51-3-1 et seq.

Survey and study of use of state land, see § 55-3-5.

Occupancy and use of lands and waters in state parks, see § 55-3-33.

State forester's membership on State Soil and Water Conservation Committee, see § 69-27-9.

JUDICIAL DECISIONS

1. In general.

The appearance before a grand jury which returned an indictment under this section of an employee of the state forestry commission who had investigated an allegedly incendiary forest fire but who had no personal knowledge of the facts was not an improper influence on the grand jury. Case v. State, 220 So. 2d 289 (Miss. 1969).

The fact that a forestry commission employee, who investigated a forest fire talked to the witnesses but had no personal knowledge of the facts, testified before the grand jury that he brought the case up in justice of the peace court and had the witnesses there for the preliminary hearing, did not place him in the category of a special prosecutor employed to assist with the prosecution, and hence his appearance before the grand jury was not an improper influence. Case v. State, 220 So. 2d 289 (Miss. 1969).

The appearance of a forestry commission employee, who had investigated a forest fire and talked to the witnesses, but had no personal knowledge of the facts, did not constitute an improper influence on the grand jury which indicted the defendant on a charge of feloniously firing woods not his own. Case v. State, 220 So. 2d 289 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 63, 65.

CJS. 98 C.J.S., Woods and Forests § 15.

§ 49-19-5. Acquisition and disposal of property.

The State Forestry Commission is hereby authorized and empowered to acquire and dispose of property of all kinds in accordance with the provisions of Section 29-1-1, in order to discharge the duties as set forth in Section 49-19-3, and subsequent germane general laws of the State of Mississippi. It is further authorized to sell, rent, lease, and dispose of any property acquired by the commission, all property to be sold or disposed of shall be sold or disposed of in the manner provided by law for the sale or disposition of surplus property by other state agencies. Any funds received from the sale, rental or lease of any property herein authorized, to be acquired, shall be paid into the State Treasury to the credit of a special account, and the commission is hereby authorized to use this fund for the replacement, repairs, and upkeep of any property authorized to be acquired and owned under this section.

SOURCES: Codes, 1942, § 6023-01; Laws, 1944, ch. 223, § 1; Laws, 1962, ch. 212; Laws, 1993, ch. 615, § 6, eff from and after July 1, 1993.

§ 49-19-7. Control pine beetle epidemics and other timber insects and pests.

(1) The Mississippi Forestry Commission shall keep itself informed as to the known varieties of pine beetles and other timber insect pests and diseases, the origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment, control and eradication. The commission shall from time to time make rules and regulations for carrying out the provisions and requirements of this section, including rules and regulations under which its employees shall (1) inspect places, timber, and timber products, and other things and substances used or connected therewith, (2) investigate, control, eradicate and prevent the dissemination of pine beetles and other timber insect pests and diseases, and (3) supervise or cause the treatment, cutting and destruction of timber or timber products and other things infested or infected therewith. The commission's employees shall have authority to carry out and execute the regulations and orders of the commission and shall have authority, under direction of the commission, to carry out provisions of this section.

(2) The Mississippi Forestry Commission and its employees shall have the authority to enter upon any and all timber lands for the purpose of carrying out the provisions of this section.

(3) All known varieties of pine beetles and other insect pests and diseases infesting or infecting or likely to infest or infect timber or timber products in this state shall be listed by the state forestry commission, and every such variety of pine beetle and every such insect pest or disease listed and all timber

and timber products infested or infected therewith are hereby declared to be a public nuisance.

(4) Before entering upon any lands for the purpose of removing any infested or infected timber having a value in excess of one hundred dollars ($100.00), where the owner of such land will not cause the removal of such infested or infected timber, the forestry commission shall first secure an order of the chancery court in term time or in vacation authorizing the commission to effect such removal. Process on any resident owner in any such proceeding shall be served as other process, and process on any non-resident owner shall be had by mailing such process by registered mail, return receipt requested, to the last known address of such non-resident or by publication in three weekly issues of a newspaper published in the county where such timber land is located if no mailing address is known. Any hearing under provisions of this section may be set at any time five days after date of service of process, or in case of publication five days after completion of such publication.

(5) It is the purpose of this section to authorize and empower the state forestry commission to control disease or insect infections or infestations in timber and timber products within this state. It is not the purpose of this section to transfer any powers from the state plant board to the state forestry commission. Use of the word "timber" shall be deemed to refer to such trees as are normally used in the manufacture of lumber and the term "timber products" shall be deemed to refer to products manufactured from such trees normally used in the manufacture of lumber.

SOURCES: Codes, 1942, § 6023-05; Laws, 1954, ch. 183, §§ 1-5.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-9. Fire protection services for Choctaw Indian lands.

(1) The State Forestry Commission is hereby authorized to extend fire protection services to the Choctaw Indian lands located in Attala, Kemper, Leake, Neshoba, Newton, Jones and Scott Counties, Mississippi.

(2) The State Forestry Commission is authorized to accept from the Choctaw Agency adequate compensation for fire detection and suppression, which sum may be used by the forestry commission in its fire protection work.

SOURCES: Codes, 1942, § 6023-11; Laws, 1964, ch. 242, §§ 1, 2; Laws, 1989, ch. 514, § 1, eff from and after July 1, 1989.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 5.

§ 49-19-11. Land adjacent to protective areas, etc.

The State Forestry Commission is hereby authorized to protect intermingled or adjacent state owned lands in the same manner and form as other lands within the state and the expenses thereof may be paid out of any appropriation made to the State Forestry Commission; provided such expenditures are not greater per acre in any year than the expenditures by the commission on account of the protection of any other lands than that owned by the State of Mississippi.

The provisions of this section shall not be applicable to the protection of established state parks, state forests or other state owned lands when increased expenditure may be necessary for the protection thereof in the opinion of the State Forestry Commission.

It is hereby made the duty of all agents and employees of the State Forestry Commission to report to the commission any timber or other trespass discovered by such agent or employees on state owned lands giving detailed information thereof in such report.

SOURCES: Codes, 1942, § 6041; Laws, 1936, ch. 223; Laws, 1989, ch. 514, § 2, eff from and after July 1, 1989.

Cross References — Timber rights on tax-forfeited lands, see § 27-41-83.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-13. Part of severance tax may be donated by county.

The boards of supervisors of the several counties are hereby authorized, in their discretion, to appropriate and pay to the state forestry commission from the general fund of the county each year a sum of money not exceeding twenty-five per cent of the forest severance tax received by the county the preceding year. Such money so appropriated shall be used by the state forestry commission for forestry work and protection in such county.

SOURCES: Codes, 1942, § 6043; Laws, 1942, ch. 220.

§ 49-19-15. Appropriations.

The state forestry fund when made available by proper appropriation by the Legislature, shall be expended by the commission in carrying out and enforcing all laws pertaining to the protection of forests as the commission may direct, the vouchers to be drawn and paid as by other departments of the state.

SOURCES: Codes, 1930, § 6171; 1942, § 6028; Laws, 1926, ch. 161.

Cross References — Disposition of revenue derived from state forests and parks, see § 55-3-15.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 98 C.J.S., Woods and Forests § 14.

§ 49-19-17. Study of forestry in schools and colleges.

The state and county boards of public education are directed to provide for proper courses of instruction by textbooks, or lectures on the general subject of forestry in all the public schools and colleges of this state; and they are further directed to provide for the celebration of arbor day by all public schools, on which day ornamental and shade trees, flowers, etc., are to be placed, where practicable, on the grounds surrounding all public schoolhouses.

SOURCES: Codes, 1930, § 6167; 1942, § 6025; Laws, 1926, ch. 161.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-19. Free commercial tree seedlings for farm owners and schools.

(1) To encourage better land use, to assist in controlling headwaters, to prevent soil erosion, to help increase community and individual farm incomes, and to assist schools in forest education and timber management, the Mississippi Forestry Commission is hereby authorized to produce and make available to farm owners and to schools of this state, having lands contiguous to the school site suitable for reforestation, free commercial tree seedlings not to exceed five thousand (5,000) trees per farm owner per year, and not to exceed five thousand (5,000) trees per school, providing the farm owner or owners and school trustees desiring such seedlings enter into a cooperative agreement with the state forestry commission assuring the commission of the proper planting, care, and protection of all seedlings thus furnished from fire and wasteful cutting. The minimum number of seedlings furnished any consignee under this section shall not be less than one thousand (1,000).

(2) In its cooperative agreement, the Mississippi Forestry Commission may provide for the payment to it of a penalty of not exceeding Ten Dollars ($10.00) per thousand trees for each thousand or part thereof planted in violation of the purposes and intent of this section.

(3) The Mississippi Forestry Commission is hereby authorized to use such funds as it may have available in carrying out the intent and purposes of this section.

SOURCES: Codes, 1942, § 6046-31; Laws, 1946, ch. 447, §§ 1-3.

Cross References — Creation of Tree Seedling Revolving Fund for the production, purchase and resale of tree seedlings, see § 49-19-27.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-21. How moneys contributed by government spent.

All moneys received from the United States government for protection of forest lands, for reforestation of denuded areas, for extension of national forests, and to promote the continuous production of timber shall be credited to said state forestry fund, and expended by the commission as is directed by the federal government.

SOURCES: Codes, 1930, § 6170; 1942, § 6027; Laws, 1926, ch. 161.

§ 49-19-23. Federal funds; apportionment.

All moneys paid to the State of Mississippi by the United States, on account of national forest lands in Mississippi, established under the provisions of the Weeks Law, so-called, being an Act of Congress, approved March 1, 1911, and amendments thereto, shall be apportioned by the state treasurer to the several counties in which such national forest lands are or may be, in proportion to the area of such national forest lands in each, as determined by the forest service of the United States Department of Agriculture.

The several sums so apportioned to each county shall be paid over by the state treasurer to the county depository within sixty (60) days after receipt thereof, and fifty percent (50%) of such funds received by the county shall be expended for the benefit of the public schools, and the remaining fifty percent (50%) of such funds shall, in the discretion of the board of supervisors, be expended for the benefit of the public roads or of the public schools of the school districts within which national forest lands may be located.

In any area affected not having a school located therein, all of such funds may be expended on roads.

In counties containing one hundred sixty thousand, two hundred fifty-three (160,253) acres of national forest lands located solely within three (3) supervisors districts, if the board of supervisors elects to apportion fifty percent (50%) of the funds so received to public roads, the funds shall be expended upon the public roads within the supervisors district or districts within which the national forest lands are located.

In counties containing one hundred sixty thousand, two hundred fifty-three (160,253) acres of national forest lands located solely within three (3) supervisors districts, that portion of the funds allocated to public schools may, within the discretion of the county school board, be expended for the public schools within the county wherein the national forest lands are located.

In any county wherein there is located a national forest traversed by the Chickasawhay River and in which U. S. Highways 84 and 45 intersect, all such funds so received shall be expended in such manner as the board of supervisors shall determine in the public interest for the maintenance of public roads and support of the public schools.

SOURCES: Codes, 1942, § 6044; Laws, 1936, ch. 310; Laws, 1950, ch. 269; Laws, 1952, ch. 195; Laws, 1956, ch. 161; Laws, 1970, ch. 320, § 1, eff from and after July 1, 1970.

Cross References — When limitation of indebtedness may be exceeded, see § 37-59-7.

Federal Aspects — The Weeks Law, referred to in this section, is codified as 16 U.S.C. §§ 480, 500, 515-519, 521, 552, and 563.

JUDICIAL DECISIONS

1. In general.

It was not necessary that funds received from the federal government, on account of national forest lands in the county, be apportioned to the several road districts, or school districts in which national forest lands were located, according to the forest land acreage or mileage of public roads of each such district, and in the absence of such statutory requirement, the court had no authority to compel the board of supervisors to apportion the funds in that manner. State ex rel. Arrington v. Board of Supvrs., 221 Miss. 548, 73 So. 2d 169 (1954).

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 98 C.J.S., Woods and Forests § 11.

§ 49-19-25. Fires declared nuisances; abandoned open cisterns and wells declared nuisances; abatement.

(a) Any fire on any forested, cutover, brush lands or grass lands burning uncontrolled is hereby declared a public nuisance by reason of its menace to life and property. Any person, firm or corporation negligently or wilfully and maliciously responsible for the starting or the existence of such fire on land other than his own is hereby required to control or extinguish it immediately, and if said person, firm or corporation shall wilfully refuse, neglect or fail to do so, any organized fire suppression agency recognized by the Mississippi Forestry Commission, may summarily abate the nuisance thus constituted by controlling or extinguishing the fire. The cost of abating such nuisance, with all costs and reasonable attorney's fees to be allowed by the court, may be recovered from the person, firm or corporation responsible for such nuisance by civil action in the proper court, action for said recovery to be filed by the agency abating the nuisance. This section shall not impair any remedy now allowed by law.

(b) Any open cistern or well, which has been abandoned or is no longer used for the purpose of a cistern or well is hereby declared to be a public nuisance by reason of its menace to life and property, and the Mississippi Forestry Commission is hereby authorized to seal such cistern or well upon request of the landowner. A reasonable fee shall be charged for this purpose and all fees collected shall be handled in the same manner as other service charges collected by the commissioner.

SOURCES: Codes, 1942, § 6046, Laws, 1940, ch. 219; Laws, 1970, ch. 298, § 1, eff from and after passage (approved March 6, 1970).

Cross References — Charging grand jury with respect to state forest fire laws, see § 13-5-47.

Liability for setting fire on lands of another, see § 95-5-25.

Penalty for firing woods, see § 97-17-13.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 5.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 49-19-27. Tree Seedling Revolving Fund; reforestation.

(1) There is created in the State Treasury a fund designated as the Tree Seedling Revolving Fund. The State Forestry Commission shall use the fund to contract for the production or purchase of tree seedlings, for resale to Mississippi landowners for reforestation.

(2) The Tree Seedling Revolving Fund shall be funded by monies received from the sale of contract seedlings to Mississippi landowners. Monies collected from the sales shall be deposited into the Tree Seedling Revolving Fund. The State Treasurer shall make disbursements for payment of production or purchase of seedlings upon requisition by the Forestry Commission and upon the issuance of warrants by the Department of Finance and Administration.

(3) The Tree Seedling Revolving Fund is created to supplement the State Forestry Commission's seedling production capacity and not for its replacement.

SOURCES: Laws, 1987, ch. 351; reenacted and amended, Laws, 1994, ch. 648, § 1; Laws, 2000, ch. 320, § 1, eff from and after passage (approved Apr. 8, 2000.)

Cross References — Availability of free commercial tree seedlings for farm owners and schools, see § 49-19-19.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-29. Repealed.

Repealed by Laws of 1992, ch. 548 § 13, eff from and after July 1, 1993. [En Laws, 1992, ch. 548, § 13]

Editor's Note — Former § 49-19-29 was entitled: Forest Industry Task Force.

§ 49-19-31. Joint Study Committee on Forestry.

(1) There is hereby created a Joint Study Committee on Forestry in Mississippi. The committee shall study and make recommendations, including recommended legislation regarding the Forestry Commission, coordination of forestry policy, the coordination of overlapping conservation practices by state agencies, the seedling shortage and other matters related to the forestry industry.

(2) The committee shall be composed of the following members:

(a) The Chairman of the Senate Forestry Committee, Chairman of the Senate Agriculture Committee, and two (2) members of the forestry committee appointed by the Lieutenant Governor.

(b) The Chairman of the House Agriculture Committee and three (3) members of the agriculture committee appointed by the Speaker of the House of Representatives.

(c) The Chairman of the Senate Forestry Committee and the Chairman of the House Agriculture Committee shall serve as co-chairs of the committee.

(3) The members of the joint committee shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session and shall obtain the approval of their respective management committees for per diem and travel expense expenditures of the committee.

(4) The committee shall utilize clerical and legal staff employed by the Legislature and may utilize any assistance made available to it by any state agency.

(5) Upon presentation of its final report the committee shall be dissolved.

SOURCES: Laws, 1997, ch. 597, § 2, eff from and after July 1, 1997.

Cross References — State Forestry Commission, see §§ 49-19-1 et seq.

§ 49-19-33. Southern Regional Fire Training Center renamed the Richard (Dick) Allen Building.

The Southern Regional Fire Training Center Building located in Pearl, Mississippi, shall be renamed the Richard (Dick) Allen Building. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Richard (Dick) Allen Building which states the background, accomplishments and service to

Mississippi of Richard Allen as Executive Director of the State Forestry Commission.

SOURCES: Laws, 2007, ch. 317, § 1, eff from and after July 1, 2007.

FOREST HARVESTING

Sec.

49-19-51. Title; cooperation of state agencies.
49-19-53. Forest harvesting law; legislative policy.
49-19-55. Trees to be left standing; cutting for naval stores.
49-19-57. Pine trees.
49-19-59. Hardwood trees.
49-19-61. Mixed pine and hardwood trees.
49-19-63. Seed trees.
49-19-65. Publicity; posting notices.
49-19-67. Sections inapplicable in certain cases.
49-19-69. Prior contracts.
49-19-71. Enforcement by Forestry Commission; injunction.
49-19-73. Cooperation of law enforcement officers.
49-19-75. Penalty for violation.
49-19-77. Owners encouraged to leave seed trees.

§ 49-19-51. Title; cooperation of state agencies.

Sections 49-19-51 through 49-19-75 shall be known as "The Forest Harvesting Law," and may be cited as such, and to effectively carry out the purposes of such sections all agencies of the state whose duty it is to encourage and apply its laws, including any and all boards, commissions, bureaus and other bodies, shall make such interpretation and applications as will most nearly comply with the intent and purposes set forth in Section 49-19-53.

SOURCES: Codes, 1942, § 6046-11; Laws, 1944, ch. 240, § 2.

§ 49-19-53. Forest harvesting law; legislative policy.

It is hereby recognized that only a small proportion of the privately owned forest land in the State of Mississippi is now managed in accordance with sound forestry practices; that there is waste, inefficiency and wanton destruction of the forest lands in the harvesting of forest products and the utilization of forest lands; that such conditions are resulting in serious economic and social loss and that it is hereby recognized that state regulation of harvesting of forest products and the utilization of forest lands in the state is essential to promote health, safety and general welfare of the people of the state. It is, therefore, declared to be the public policy of the State of Mississippi and the purposes of Sections 49-19-51 through 49-19-75 to encourage better management of forest lands; to increase the efficiency in the harvesting of forest products and utilization of forest lands; to preserve the tax base represented by forests and forest lands; to preserve and develop forest lands for the equal and guaranteed use for future generations; to preserve and protect the forest resources and the continuous growth of timber on lands suitable therefor; to insure an adequate supply of forest products at all times; to prevent soil erosion and consequent silting of stream channels and reservoirs; to protect watersheds and reservoirs and to insure at all times an adequate supply of water of the forest quality; to preserve and insure for all times adequate habitats for wildlife; to preserve scenic beauty and to insure adequate facilities for outdoor recreation for public use; and to reduce forest fire hazards and encourage private ownership, economic management and scientific development of forest lands.

SOURCES: Codes, 1942, § 6046-10; Laws, 1944, ch. 240, § 1.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-55. Trees to be left standing; cutting for naval stores.

No person, firm, partnership, association, or corporation shall work, contract to work, authorize, direct or assist in the working of new faces for naval stores purposes on trees less than ten (10) inches in diameter unless there is left unfaced or untapped on each acre of forest land being worked one hundred (100) or more well distributed trees four inches or more in diameter, or at least four (4) seed trees of ten (10) inches or more in diameter.

SOURCES: Codes, 1942, § 6046-12; Laws, 1944, ch. 240, § 3.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-57. Pine trees.

(a) No person, partnership, firm, association or corporation shall cut, authorize, direct or assist in the cutting for commercial purposes any pine trees unless there is left standing on each acre of forest land being harvested at least four pine seed trees of ten inches or more in diameter, except as hereinafter provided.

(b) No person, partnership, firm, association, or corporation shall cut, contract to cut, authorize, direct or assist in the cutting for commercial purposes any pine trees under ten inches in diameter unless there is left standing on each acre of forest land being harvested, one hundred (100) or more well distributed pine trees four inches or more in diameter or at least four pine seed trees of ten inches or more in diameter. However, an operator may submit to the enforcing agency an acceptable plan of management which will assure continued productivity of the area to be harvested in lieu of the above provisions.

SOURCES: Codes, 1942, § 6046-13; Laws, 1944, ch. 240, § 4.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-59. Hardwood trees.

(a) No person, partnership, firm, association, or corporation shall cut, contract to cut, authorize, direct or assist in the cutting for commercial purposes any hardwood trees unless there is left standing on each acre of forest land being harvested at least six hardwood trees of ten inches or more in diameter of the commercial species being harvested, except as hereinafter provided.

(b) No person, partnership, firm, association, or corporation shall cut, contract to cut, authorize, direct, or assist in the cutting for commercial purposes any hardwood trees under ten inches in diameter unless there is left standing on each acre of forest land being harvested one hundred (100) or more well distributed hardwood trees of four inches or more in diameter or at least six hardwood seed trees of ten inches or more in diameter of the commercial species being harvested.

SOURCES: Codes, 1942, § 6046-14; Laws, 1944, ch. 240, § 5.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-61. Mixed pine and hardwood trees.

Where timber is to be harvested for commercial purposes on forest lands containing a mixed stand of pine and hardwood timber, no person, partnership, firm, association or corporation shall cut, contract to cut, authorize, direct or assist in cutting of any timber from such lands unless there is left standing on each acre of land at least four pine seed trees of ten inches or more in diameter of the commercial species being harvested along with at least two hardwood seed trees of ten inches or more in diameter of the commercial species which is being harvested. In the event that pine trees predominate in such mixed stands, and it is desired that pine trees less than eight inches in diameter are to be harvested, Section 49-19-57 shall rule. On lands classified as mixed stands of pine and hardwood there shall be no limitations on the amount or size of the hardwood trees harvested.

SOURCES: Codes, 1942, § 6046-15; Laws, 1944, ch. 240, § 6.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-63. Seed trees.

All trees left for seed trees in compliance with the provisions of Sections 49-19-51 through 49-19-75 shall be thrifty trees of desirable species with well formed crowns, uninjured from tapping, cutting or logging operations and as well distributed over the acre as may be possible. No seed tree left standing subsequent to the provisions of the aforementioned sections shall be cut except for clearing land for actual cultivation until other trees of the same species and in sufficient numbers as required by Sections 49-19-51 through 49-19-75 for seed trees have grown to be of eight inches or more in diameter. For the purpose of such sections three diameter measurements shall be taken outside of the bark and twelve inches above the ground for pine trees, and above the swell for hardwood trees. Black Jack and scrub oak shall not be considered as seed trees.

SOURCES: Codes, 1942, § 6046-16; Laws, 1944, ch. 240, § 7.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-65. Publicity; posting notices.

It shall be the duty of the state forestry commission to give general publicity throughout the state to Sections 49-19-51 through 49-19-75 and post notices covering such sections in at least three public places in each county, one of which shall be posted on the bulletin board at the front door of the courthouse in each of the counties.

SOURCES: Codes, 1942, § 6046-22; Laws, 1944, ch. 240, § 13.

§ 49-19-67. Sections inapplicable in certain cases.

Sections 49-19-51 through 49-19-75 shall not apply to nor shall it prohibit the clearing of land for bona fide use in crop production, nor the clearing of land for pasture purposes where such pasture is enclosed with a standard wire fence of two or more strands, nor to the clearing for building sites, right-of-ways for roads, power or communication lines or similar uses; nor shall such sections apply to individuals cutting timber from their own lands for their own personal use where there is no sale, commercial gain or profit involved, nor those special cases where permission is obtained in writing from the state forestry commission for the emergency removal of storm or disease damaged timber.

SOURCES: Codes, 1942, § 6046-17; Laws, 1944, ch. 240, § 8.

§ 49-19-69. Prior contracts.

The provisions of Sections 49-19-51 through 49-19-75 shall not apply to nor affect any valid timber cutting contract made and entered into prior to the approval of said sections.

SOURCES: Codes, 1942, § 6046-21; Laws, 1944, ch. 240, § 12.

§ 49-19-71. Enforcement by Forestry Commission; injunction.

It shall be the duty of the Mississippi Forestry Commission and its employees to enforce the terms and provisions of Sections 49-19-51 through 49-19-75 and to that end said commission or its employees are hereby authorized to enter upon any and all forestry lands to make such inspection and investigation as may be necessary for the proper enforcement of said sections and, in addition to the other remedies, conferred by such sections or other laws of the state the forestry commission is hereby authorized to enter suit on behalf of the state to enjoin any person, partnership, firm, association, or corporation from violating any of the terms and provisions of such sections and in such suits the commission shall not be required to give bond, and the said commission is also authorized to employ inspectors and such other help as may be necessary for the effective carrying out of the intent and purposes of such sections.

SOURCES: Codes, 1942, § 6046-18; Laws, 1944, ch. 240, § 9.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 63, 65.

CJS. 98 C.J.S., Woods and Forests § 15.

§ 49-19-73. Cooperation of law enforcement officers.

In order to more adequately enforce the provisions of Sections 49-19-51 through 49-19-75, it is hereby made the duty of each sheriff, constable, conservation officer, district attorney and county prosecuting attorney to make, from time to time, inquiry as to any violation of Sections 49-19-51 through 49-19-75 and to promptly report any violation to the state forestry commission and further to assist the commission, its officers and employees in enforcing any of the provisions of the aforesaid sections and in prosecuting any violations thereof. It shall be the duty of the various circuit judges at each convening of the grand jury to call the grand jurors' attention to such sections and to charge them to fully investigate any violations thereof.

SOURCES: Codes, 1942, § 6046-19; Laws, 1944, ch. 240, § 10; Laws, 1974, ch. 569 § 21, eff from and after passage (approved April 24, 1974).

§ 49-19-75. Penalty for violation.

The unit for checking compliance is here defined as forty (40) acres or fraction thereof being harvested or worked and any person, partnership, firm, association, or corporation who violates any of the terms, or provisions of Sections 49-19-51 through 49-19-75 shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than Twenty-five Dollars ($25.00) and not more than Fifty Dollars ($50.00) for each separate offense; and the working or harvesting of a unit of forty (40) acres or fraction thereof of forest lands on which ten percent (10%) or more of the area worked or harvested is in violation of the aforesaid sections shall constitute a separate offense hereunder.

SOURCES: Codes, 1942, § 6046-20; Laws, 1944, ch. 240, § 11.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 6.

§ 49-19-77. Owners encouraged to leave seed trees.

The owner or owners of forested lands which shall be cut over, denuded or bled for turpentine, and those who cut over, denude or bleed for turpentine forest lands belonging to another shall be encouraged to leave standing and unbled on each section or fractional part thereof an average of one seed tree per acre to promote the natural reforestation of the same.

SOURCES: Codes, 1930, § 6168; 1942, § 6026; Laws, 1926, ch. 161.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 3.

FORESTRY EDUCATION, TIMBER MANAGEMENT AND FOREST FIRE CONTROL

SEC.
49-19-111. Promotion of forestry education, timber management and forest fire control.
49-19-113. Forestry districts and areas to be created.
49-19-115. Forest acreage tax. [Repealed effective June 30, 2016].
49-19-117. Use of funds by State Forestry Commission.

§ 49-19-111. Promotion of forestry education, timber management and forest fire control.

For the purpose of providing assistance to all farm woodland and timber landowners in the state, including private ownership, and to promote the growing, managing and harvesting of timber thereon, and to provide organized forest fire protection in all counties, and to encourage the production and growth of timber on all lands suitable therefor, and for the better management thereof, and to encourage greater private ownership and promote forest education and timber management and forest fire control, the State Forestry Commission is hereby authorized to carry out the provisions of Sections 49-19-111 through 49-19-117.

SOURCES: Codes, 1942, § 6046-01; Laws, 1944, ch. 238, § 1; Laws, 1989, ch. 514, § 3, eff from and after July 1, 1989.

Cross References — Forest harvesting law, see §§ 49-19-53 et seq.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 15.

§ 49-19-113. Forestry districts and areas to be created.

In order to carry out further the program herein authorized, the state forestry commission be and it is hereby authorized to organize, divide or set up forest districts and areas throughout the state, which districts and areas shall be so organized, divided or set up in accordance with the distribution of forest land and the location of political boundaries as to best serve the interest of the state as a whole. The commission shall appoint a district forester and assistant district forester for each district and shall appoint an area forester for each forest area, all of whom shall be charged with the duty of directing forestry education, timber management, forest fire control and other necessary forestry conservation activities and practices as the commission shall deem necessary.

SOURCES: Codes, 1942, § 6046-03; Laws, 1944, ch. 238, § 3; Laws, 1952, ch. 200.

§ 49-19-115. Forest acreage tax. [Repealed effective June 30, 2016].

(1) The board of supervisors of all counties are hereby directed to levy a special tax to be known as "the forest acreage tax." Such tax shall be Two Cents (2¢) per acre on all timbered and uncultivatable lands in the county in order to receive the financial and supervisory cooperation of the State Forestry Commission in carrying out organized forest fire control and other provisions of Sections 49-19-111 through 49-19-117.

(2) In addition to the tax levied under subsection (1) of this section, the board of supervisors of all counties are hereby directed to levy an additional

forest acreage tax on all timbered and uncultivatable lands in the county beginning October 1, 1989, and continuing for three (3) succeeding years in the following amounts:

	Increase	Total Acreage Tax
Fiscal year ending September 30, 1990	3¢ per acre	5¢ per acre
Fiscal year ending September 30, 1991	2¢ per acre	7¢ per acre
Fiscal year ending September 30, 1992	2¢ per acre	9¢ per acre

Upon completion of the third year, the total acreage tax shall remain at the Nine Cents (9¢) per acre per year.

(3) Uncultivatable lands shall not include bogs, unreclaimed strip mine areas, coastal beach sands, tidal and freshwater marshes, beaver ponds and flood or flowage easements.

(4) Those homeowners described in Section 27-33-67(2), who qualify for the exemptions allowed in Article 1, Chapter 33, Title 27, Mississippi Code of 1972, shall be exempt from any forest acreage tax levied pursuant to this section.

(5) The provisions of this section and the tax levy required herein shall not be applicable to any counties which were not levying such forest acreage tax on January 1, 1989.

(6) This section shall be repealed on June 30, 2016.

SOURCES: Codes, 1942, § 6046-04; Laws, 1932, ch. 310; Laws, 1944, ch. 238, § 4; Laws, 1950, ch. 210; Laws, 1944, ch. 238, § 4; Laws, 1954, ch. 179; Laws, 1960, ch. 204; Laws, 1980, ch. 459; Laws, 1984, ch. 453, § 21; Laws, 1989, ch. 514, § 4; Laws, 1996, ch. 490, § 1; Laws, 2002, ch. 387, § 1; Laws, 2003, ch. 523, § 2; Laws, 2006, ch. 599, § 1; Laws, 2008, ch. 334, § 1; Laws, 2012, ch. 417, § 1, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision from "June 30, 2012" to "June 30, 2016" at the end of (6).

Cross References — Exemption from forest acreage tax on certain homesteads, see §§ 27-33-3 and 27-33-67.

Duty of tax collector to enforce payment of all tax assessments, see § 27-39-309.

Remission and expenditure of taxes collected under this section, see § 49-19-117.

Local tax levy to purchase land for state parks and forests, see § 55-3-13.

ATTORNEY GENERAL OPINIONS

Real property exempt from taxation by virtue of government ownership was also exempt from forest acreage tax. Bennett, Feb. 24, 1994, A.G. Op. #94-0060.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 98 C.J.S., Woods and Forests § 3.

§ 49-19-117. Use of funds by State Forestry Commission.

(1) All forest acreage taxes assessed and collected by such levy as provided for in Section 49-19-115 shall be remitted to the forest acreage account in the State Treasury and shall be expended by the Forestry Commission as the commission may deem necessary in carrying out the purpose and intent of Sections 49-19-111 through 49-19-117.

(2) The State Forestry Commission is hereby authorized to use state funds appropriated for the purpose of Sections 49-19-111 through 49-19-117 in addition to any funds made available from county forest acreage taxes, federal funds and other sources.

(3) The State Forestry Commission is hereby authorized to expend the funds herein provided in such manner as to most effectively carry out the provisions of Sections 49-19-111 through 49-19-117. The forest acreage tax levied at the rate of Two Cents (2¢) per acre under Section 49-19-115(1) shall be utilized on an economical and practical basis in order to foster, encourage, promote and bring about forestry education, timber management and organized forest fire control throughout the State of Mississippi. The additional forest acreage tax levied under Section 49-19-115(2) shall be utilized by the State Forestry Commission to purchase fire support equipment, including transport trucks, tractors and other related fire support equipment. The additional forest acreage tax levied under Section 49-19-115(2) shall be appropriated under the appropriation process.

SOURCES: Codes, 1942, § 6046-05; Laws, 1944, ch. 238, §§ 5-7 (a-c, supra); Laws, 1952, ch. 201 (b, supra); Laws, 1962, ch. 211; Laws, 1973, ch. 369, § 1; Laws, 1982, ch. 348; Laws, 1984, ch. 495, § 22; reenacted and amended, Laws, 1985, ch. 474, § 16; Laws, 1986, ch. 438, § 34; Laws, 1987, ch. 483, § 35; Laws, 1988, ch. 442, § 32; Laws, 1989, ch. 514, § 5; Laws, 1989, ch. 537, § 31; Laws, 1990, ch. 518, § 32; Laws, 1991, ch. 618, § 32; Laws, 1992, ch. 491 § 34, eff from and after passage (approved May 12, 1992).

Cross References — Participation in a comprehensive plan of one or more policies of liability insurance, see § 11-46-17.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 98 C.J.S., Woods and Forests § 15.

SOUTH CENTRAL INTERSTATE FOREST FIRE COMPACT

Sec.
49-19-141. South Central Interstate Forest Fire Protection Compact authorized.
49-19-143. When compact effective.

49-19-145. State forester as compact administrator.
49-19-147. Powers and duties of compact administrator.
49-19-149. Giving and accepting assistance from member states.

§ 49-19-141. South Central Interstate Forest Fire Protection Compact authorized.

The governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of Arkansas, Louisiana, Oklahoma, and Texas, and the legislature hereby signifies in advance its approval and ratification of such compact:

SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I.

The purpose of this compact is to promote effective prevention and control of forest fires in the south central region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest development.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two (2) or more of the states of Arkansas, Louisiana, Mississippi, Oklahoma, and Texas which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the senate and one member of the house of representatives, and the governor of each member state shall appoint one representative who shall be the chairman of the state forestry commission or comparable official and one representative who shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.

Article VII.

The compact administrators may request the United States Forest Service to act as the primary research and coordinating agency of the South Central Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

Article VIII.

The provisions of article IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

Article IX.

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state takes action to withdraw therefrom. Such action shall not be effective until six (6) months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

SOURCES: Codes, 1942, § 6046-41; Laws, 1954, ch. 181, § 1.

Cross References — Southeastern Interstate Forest Fire Protection Compact, see § 49-19-171.

Comparable Laws from other States — Arkansas Code Annotated, §§ 15-33-101 through 15-33-103.

Louisiana Revised Statutes Annotated, § 3:4296.

Oklahoma: 2 Okl. St. § 16-35.

Texas Education Code, § 88.112.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 5.

§ 49-19-143. When compact effective.

When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy thereof to be filed with the state secretary, and when the compact shall have been ratified by one or more of the states named in Section 49-19-141, then the compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

SOURCES: Codes, 1942, § 6046-42; Laws, 1954, ch. 181, § 2.

Cross References — Effective date of Southeastern Interstate Forest Fire Protection Compact, see § 49-19-173.

§ 49-19-145. State forester as compact administrator.

The state forester of Mississippi shall act as "compact administrator" for the State of Mississippi and represent Mississippi in the South Central Interstate Forest Fire Protection Compact. The "advisory committee" shall be composed of four (4) members as follows: (1) One member of the senate, (2) one member of the house of representatives, each of whom shall be appointed by the Mississippi Commission on Interstate Cooperation, (3) the state forester or his successor, or a comparable official, in the event of amendment to the present law, who shall be appointed by the governor and shall serve as chairman of the advisory committee, and (4) one member who shall be associated with forestry or forest products industries, to be appointed by the governor; each member shall serve for a term of four (4) years and be eligible to immediately succeed himself.

SOURCES: Codes, 1942, § 6046-43; Laws, 1954, ch. 181, § 3.

Cross References — Compact administrator and advisory committee of Southeastern Interstate Forest Fire Protection Compact, see § 49-19-175.

§ 49-19-147. Powers and duties of compact administrator.

The compact administrator, with the assistance of the advisory committee, shall be authorized to do any and all things necessary in order to effectuate the terms and provisions of the compact contained herein, and Sections 49-19-141 through 49-19-149 shall be entitled to a liberal interpretation in order to carry out the spirit and intent of interstate cooperation in fire control for the mutual benefit of the states participating therein. Among the powers conferred upon the compact administrator, but not limiting his powers thereto, shall be that of formulating and, in accordance with need, from time to time, revising a regional forest fire plan for the member states. It shall be the duty of the compact administrator of Mississippi in cooperation with those compact administrators in the member states to formulate and put in effect a forest fire plan for Mississippi and take such measures as may be necessary to integrate such forest fire plan with the forest fire plan formulated by the compact administrators.

SOURCES: Codes, 1942, § 6046-44; Laws, 1954, ch. 181, § 4.

Cross References — Powers and duties of compact administrator of Southeastern Interstate Forest Fire Protection Compact, see § 49-19-177.

§ 49-19-149. Giving and accepting assistance from member states.

Among the other rights and powers conferred by Sections 49-19-141 to 49-19-149, but not limiting the same, is the right and power of this state to go to the assistance of a member state and to accept aid and assistance from a member state, paying therefore under the terms and provisions of Articles IV and V of the compact contained herein; and the State of Mississippi pledges hereby that it will pay any sums due under this compact for the employment of personnel or otherwise where assistance is rendered to Mississippi by a member state. Articles IV and V are hereby ratified, confirmed and approved.

SOURCES: Codes, 1942, § 6046-45; Laws, 1954, ch. 181, § 5.

Cross References — Assistance of member states in Southeastern Interstate Forest Fire Protection Compact, see § 49-19-179.

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

SEC.
49-19-171. Southeastern Interstate Forest Fire Protection Compact authorized.
49-19-173. When compact effective.
49-19-175. State forester as compact administrator; advisory committee.
49-19-177. Powers and duties of compact administrator.
49-19-179. Giving and accepting assistance from member states.

§ 49-19-171. Southeastern Interstate Forest Fire Protection Compact authorized.

The governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such compact:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I.

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two (2) or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrator of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the senate and one member of the house of representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two (2) representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purpose of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate

Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

Article VIII.

The provisions of articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

Article IX.

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state, as the laws of such state provide, takes action to withdraw therefrom. Such action shall not be effective until six (6) months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

SOURCES: Codes, 1942, § 6046-51; Laws, 1954, ch. 180, § 1.

Cross References — South Central Interstate Forest Fire Protection Compact, see § 49-19-141.

Comparable Laws from other States — Alabama Code, §§ 9-13-200, 9-13-201.
Florida: Fla. Stat. § 590.31.
Georgia Code Annotated, §§ 12-10-60 through 12-10-64.
Kentucky: KRS § 149.310.
Louisiana Revised Statutes Annotated, § 3:4296.
North Carolina: N.C. Gen. Stat. § 106-930.
South Carolina: S.C. Code Ann. § 48-37-10.
Tennessee Code Annotated, §§ 11-4-501 through 11-4-505.
Virginia: Va. Code Ann. § 10.1-1149.
West Virginia: W. Va. Code § 20-3-20 et seq.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 63.

CJS. 98 C.J.S., Woods and Forests § 5.

§ 49-19-173. When compact effective.

When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy thereof to be filed with the state secretary, and when the compact shall have been ratified by one or more of the states named in Section 49-19-171, then the compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

SOURCES: Codes, 1942, § 6046-52; Laws, 1954, ch. 180, § 2.

Cross References — Effective date of South Central Interstate Forest Fire Protection Compact, see § 49-19-143.

§ 49-19-175. State forester as compact administrator; advisory committee.

The state forester of Mississippi shall act as "compact administrator" for the State of Mississippi and represent Mississippi in the Southeastern Interstate Forest Fire Protection Compact. The "advisory committee" shall be composed of four (4) members as follows: (1) One member of the senate, (2) one member of the house of representatives, each of whom shall be appointed by the Mississippi Commission on Interstate Cooperation, (3) the state forester or his successor, or a comparable official, in the event of amendment to the present law, who shall be appointed by the governor and shall serve as chairman of the advisory committee, and (4) one member shall be associated with forestry or forest products industries, to be appointed by the governor; each member shall serve for a term of four (4) years and be eligible to immediately succeed himself. Advisory committee members shall be reimbursed for all necessary travel expenses incurred while attending compact meetings provided the total expenditure of the four members does not exceed One Thousand Two Hundred Dollars ($1,200.00) per year.

SOURCES: Codes, 1942, § 6046-53; Laws, 1954, ch. 180, § 3; Laws, 1971, ch. 428, § 1, eff from and after July 1, 1971.

Cross References — Compact administrator and advisory committee of South Central Interstate Forest Fire Protection Compact, see § 49-19-145.

§ 49-19-177. Powers and duties of compact administrator.

The compact administrator, with the assistance of the advisory committee, shall be authorized to do any and all things necessary in order to effectuate the terms and provisions of the compact contained herein and Sections 49-19-171 through 49-19-179 shall be entitled to a liberal interpretation in order to carry out the spirit and intent of interstate cooperation in fire control for the mutual benefit of the states participating therein. Among the powers conferred upon the compact administrator, but not limiting his powers thereto, shall be that of formulating and, in accordance with need, from time to time, revising a regional forest fire plan for the member states. It shall be the duty of the compact administrator of Mississippi in cooperation with those compact administrators in the member states to formulate and put in effect a forest fire plan for Mississippi and take such measures as may be necessary to integrate such forest fire plan with the forest fire plan formulated by the compact administrators.

SOURCES: Codes, 1942, § 6046-54; Laws, 1954, ch. 180, § 4.

Cross References — Powers and duties of compact administrator in South Central Interstate Forest Fire Protection Compact, see § 49-19-147.

§ 49-19-179. Giving and accepting assistance from member states.

Among the other rights and powers conferred by Sections 49-19-171 through 49-19-179, but not limiting the same, is the right and power of this state to go to the assistance of a member state and to accept aid and assistance from a member state, paying therefor under the terms and provisions of Articles IV and V of the compact contained herein; and the State of Mississippi pledges hereby that it will pay any sums due under this compact for the employment of personnel or otherwise where assistance is rendered to Mississippi by a member state. Articles IV and V are hereby ratified, confirmed and approved.

SOURCES: Codes, 1942, § 6046-55; Laws, 1954, ch. 180, § 5.

Cross References — Assistance of member states in South Central Interstate Forest Fire Protection Compact, see § 49-19-149.

FOREST RESOURCES DEVELOPMENT PROGRAM

Sec.
49-19-201. Short title.
49-19-203. Public policy stated.
49-19-205. Definitions.
49-19-207. Administration of law.
49-19-209. Employment of personnel; purchase of supplies and equipment.
49-19-211. Rules and regulations.
49-19-213. Utilization of funds to assist in implementing approved practices.
49-19-215. Eligible owners to be encouraged to use own resources or to employ private vendors.
49-19-217. When commission may act as vendor; charge for services.
49-19-219. Powers and duties of commission.
49-19-221. Limitation on amount of cost-share assistance; allocation of funds for reforestation of sixteenth section school trust lands.
49-19-223. Application for cost-share assistance; payment.
49-19-225. Implementation of approved practice on publicly owned land.
49-19-227. Forest resource development fund.

§ 49-19-201. Short title.

Sections 49-19-201 through 49-19-227 shall be cited as the "Forest Resource Development Law of 1974".

SOURCES: Laws, 1974, ch. 326, § 1, eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

ALR. Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 67, 70-119, 128.

CJS. 98 C.J.S., Woods and Forests §§ 1 et seq.

§ 49-19-203. Public policy stated.

The legislature of the State of Mississippi recognizes that the growing demands on forests and related land resources cannot be met by intensive management of public lands and industrial forests alone, and declares that the development of forest resources on poorly stocked, idle and poorly managed lands in Mississippi is needed to insure that Mississippi shall continue to develop its forest economy.

The legislature declares the development of forest resources on suitable lands to be a public policy of the State of Mississippi. The legislature is mindful, in stating this policy, that continuous timber growth of commercially valuable species for needed forest products is in the public interest, and that such growth can be attained, to a considerable degree, by making financial assistance available to private non-industrial landowners for developing forest resources on desirable and suitable sites.

SOURCES: Laws, 1974, ch. 326, § 2, eff from and after passage (approved March 5, 1974).

§ 49-19-205. Definitions.

For purposes of Sections 49-19-201 through 49-19-227, the following words shall have the meaning ascribed herein unless the context requires otherwise:

(a) "Commission" shall mean the state forestry commission.

(b) "State forester" shall mean the forester appointed by the commission.

(c) "Eligible owner" shall mean either (i) a private individual, group or association, or (ii) an agency of state, local or municipal government, but the term shall not mean or include private corporations manufacturing products or providing public utility services of any type or any subsidiary of such corporations; provided, however, only one (1) owner of land owned in joint tenancy or tenancy in common and only one (1) member or officer of any group or association shall be eligible to apply for or receive cost-share assistance to be expended for development of any or all lands owned by such owners or group or association.

(d) "Eligible lands" shall mean (i) non-industrial private lands owned by a private individual, group or association, and (ii) lands owned by the State of Mississippi or any political subdivision thereof, but shall not include lands owned by private corporations which manufacture products or provide public utility services of any type or any subsidiary of such corporations.

(e) "Cost-share assistance" shall mean the partial financial assistance in such amounts as the commission, in its discretion, shall determine, subject to the limitations of Sections 49-19-201 through 49-19-227.

(f) "Approved practice" shall mean and include planting, seeding, timber stand improvement, prescribed burning, site preparation, systematic planting of hardwood trees for game preservation and development, or such other forest resource development practice as the commission shall approve or determine proper generally or with regard to any particular applicant.

(g) "Forest development fund" shall mean the special fund established in the State Treasury, designated as the Forest Resource Development Fund, created by Section 49-19-227.

SOURCES: Laws, 1974, ch. 326, § 3, eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 1-7.

CJS. 54 C.J.S., Logs and Logging §§ 2, 30, 31.

73B C.J.S., Public Lands §§ 12-15.

98 C.J.S., Woods and Forests § 1.

§ 49-19-207. Administration of law.

The commission shall serve as administrator of the provisions of Sections 49-19-201 through 49-19-227, and shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the forest development fund.

SOURCES: Laws, 1974, ch. 326, § 4(1), eff from and after passage (approved March 5, 1974).

§ 49-19-209. Employment of personnel; purchase of supplies and equipment.

The state forester is authorized to employ such professional and clerical assistance as is needed to implement the provisions of Sections 49-19-201 through 49-19-227, and to compensate such individuals from funds appropriated for such purpose.

The state forester is authorized to purchase equipment, supplies and materials and to maintain and transport equipment as is needed to implement the provisions of Sections 49-19-201 through 49-19-227, and to defray the expenses of such purchase and transportation from any funds appropriated for such purpose.

SOURCES: Laws, 1974, ch. 326, § 4(2, 3), eff from and after passage (approved March 5, 1974).

§ 49-19-211. Rules and regulations.

The commission shall adopt and promulgate such rules and regulations as are necessary for the implementation of Sections 49-19-201 through 49-19-227. The commission is authorized to conduct public hearings or otherwise seek the advice, counsel and recommendations of interested owners, associations, industrialists or other persons or groups. Adequate notice of any public hearing must be provided within the general area of the site of the hearing.

The commission shall publish such rules and regulations and shall make the same available upon request.

SOURCES: Laws, 1974, ch. 326, § 4(4), eff from and after passage (approved March 5, 1974).

§ 49-19-213. Utilization of funds to assist in implementing approved practices.

The commission is authorized to use the money in the forest development fund to assist in implementing approved practices, on a cost-sharing basis as provided in Sections 49-19-201 through 49-19-227, on eligible lands in the State of Mississippi. However, no cost-share assistance shall be provided an eligible owner to implement any approved practice on any land or lands if the owner receives federal funds for such practice and is using such federal funds for any forest resource development practice on said land or lands. Eligible owners may use federal funds on other lands.

SOURCES: Laws, 1974, ch. 326, § 5(1), eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

ALR. Permissible use of public funds for reforestation or forest conservation. 13 A.L.R.2d 1107.

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 73B C.J.S., Public Lands §§ 12-15.

§ 49-19-215. Eligible owners to be encouraged to use own resources or to employ private vendors.

(1) The commission shall actively and diligently encourage all eligible owners to use their own resources or to employ the resources of private vendors to implement approved practices.

(2) The commission shall not enter into active competition with eligible owners or private vendors for the on-the-ground job of implementing any approved practice as it is the intent of the Legislature to encourage private business, forest industries and the forestry community to participate in the economic development which will be provided by Sections 49-19-201 through 49-19-227.

SOURCES: Laws, 1974, ch. 326, § 5(2, 3), eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

ALR. Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 63, 65.

CJS. 73B C.J.S., Public Lands §§ 12-15.

§ 49-19-217. When commission may act as vendor; charge for services.

If an eligible owner cannot provide his own resources or procure a private vendor to implement any approved practice, the commission, in its discretion, may act as vendor by utilizing employees, equipment, materials and supplies of the commission. In such event, the commission shall charge the eligible owner a sum equal to the established rate of the commission for providing such service. Payments for such charge shall be collected, received, and recorded in the same manner as other sales and services funds received by the commission.

SOURCES: Laws, 1974, ch. 326, § 5(4), eff from and after passage (approved March 5, 1974).

§ 49-19-219. Powers and duties of commission.

The commission shall have the following powers and duties to implement the provisions of Sections 49-19-201 through 49-19-227:

(a) To determine which approved practices shall be eligible for cost-share assistance;

(b) To establish maximum sums, subject to the provisions of Section 49-19-221, which any one (1) eligible owner may receive for implementation of an approved practice;

(c) To review periodically the costs of forest development practices and to make such adjustment as, in the discretion of the commission, is necessary in the Thirty-seven Dollars and Fifty Cents ($37.50) per acre assistance allowed in Section 49-19-221;

(d) Upon request of the forestry commission, the attorney general of the State of Mississippi shall institute proper legal proceedings to recover any or all of the cost-share assistance provided an eligible owner if the commission shall determine that the owner failed to implement any portion of or all of the practice approved by the commission for such owner and if the commission determines that legal proceedings are necessary and proper.

(e) To determine, before approving any cost-share assistance for any eligible owner that such approved practice is reasonable and is comparable to the actual cost of implementing such practice in the general area in which the land is located. Should the commission determine that the submitted cost of implementing the approved practice is not reasonable, the commission shall approve cost-share assistance in an amount which is determined by the commission to be reasonable for the implementation of the approved practice in the general area in which the land is located.

SOURCES: Laws, 1974, ch. 326, § 6, eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

ALR. Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Am Jur. 52 Am. Jur. 2d, Logs and Timber §§ 63, 65, 87.

CJS. 54 C.J.S., Logs and Logging §§ 26.

73B C.J.S., Public Lands §§ 6, 12-15.

98 C.J.S., Woods and Forests § 15.

§ 49-19-221. Limitation on amount of cost-share assistance; allocation of funds for reforestation of sixteenth section school trust lands.

(1) An eligible owner shall receive cost-share assistance as the commission, in its discretion, shall determine and approve, but the commission shall approve no assistance in an amount which exceeds either (a) a sum equal to seventy-five percent (75%) of the owner's actual cost incurred in implementing the approved practice approved by the commission for that owner on a particular tract of land or lands, except that with respect to sixteenth section school trust lands the commission may approve up to one hundred percent (100%) cost-share for any school district that has less has than Ten Thousand Dollars ($10,000.00) in its Forestry Escrow Fund, or (b) a sum equal to Thirty-seven Dollars and Fifty Cents ($37.50) per acre of land on which the approved practice is implemented by the owner; provided, however, that no eligible owner, in any one (1) fiscal year, shall receive a sum total for all approved practices implemented by the owner of more than Ten Thousand Dollars ($10,000.00); except that with respect to sixteenth section trust lands the commission, at its discretion, may exceed said monetary limit in order to provide a total forest improvement program within any county.

(2) The limitation of Thirty-seven Dollars and Fifty Cents ($37.50) per acre, as set forth in item (b) of subsection (1) of this section, may be changed by the commission pursuant to the authorization of subparagraph (c) of Section 49-19-219.

(3) During the reforestation of sixteenth section school trust lands classified as forest lands, no more than an average of twenty-five percent (25%) of

Forest Resource Development Program funds will be spent on the reforestation of these school trust lands.

(4) It is the intent of this section that the Mississippi Forestry Commission by 1995 bring to maximum productivity all sixteenth section land.

SOURCES: Laws, 1974, ch. 326, § 7; Laws, 1986, ch. 511, § 2, eff from and after July 1, 1986.

RESEARCH REFERENCES

ALR. Permissible use of public funds for reforestation or forest conservation. 13 A.L.R.2d 1107.

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 65.

CJS. 73B C.J.S., Public Lands §§ 12-15.

§ 49-19-223. Application for cost-share assistance; payment.

(1) Any eligible owner who wishes to receive cost-share assistance shall file an application with the commission stating the practice to be implemented, the approximate cost of such practice and a description of the land or lands upon which the practice is to be implemented. The application shall be accompanied by a statement of intent stating (a) that the owner intends to utilize the cost-share assistance for long range timber growing and improvement, (b) that the owner is not receiving or using federal funds for implementation of any approved practice on the same acre of land or lands described in the application, and (c) that the owner if an owner in joint tenancy or tenancy in common or if a member of a group or association owning the lands, has no knowledge of any application which has been filed for cost-share assistance to be used on the lands described in the application.

(2) The commission, upon completion of the approved practice, shall tender all approved sums of the cost-share assistance to the owner.

SOURCES: Laws, 1974, ch. 326, § 8, eff from and after passage (approved March 5, 1974).

RESEARCH REFERENCES

ALR. Permissible use of public funds for reforestation or forest conservation. 13 A.L.R.2d 1107.

§ 49-19-225. Implementation of approved practice on publicly owned land.

Any agency, department, board, commission or other subdivision of government of the State of Mississippi or any political subdivision thereof is authorized to implement an approved practice on any lands suitable for forestry purposes owned by such political entity or owned by the State of Mississippi and supervised or managed by such entity. The governing authorities of such entity shall engage the assistance of the county forester of the county in which the land is located in the preparation of an application for submission to the commission. The commission shall treat any such political entity as an individual owner for purposes of considering applications, granting cost-share assistance and approving the practice implemented.

SOURCES: Laws, 1974, ch. 326, § 9, eff from and after passage (approved March 5, 1974).

§ 49-19-227. Forest resource development fund.

There is hereby created in the State Treasury a special fund to be designated the Forest Resource Development Fund, fiscal management and responsibility for which is hereby vested in the State Forestry Commission and which shall consist of that portion of the privilege tax on timber and timber products as authorized by Section 27-25-11, Mississippi Code of 1972, and any funds appropriated specifically therefor by the Legislature. The Legislature shall appropriate such sums as it may deem necessary including any proceeds of general obligation bonds which may be authorized by the Legislature for the support of the Forest Resources Development Program provided for under Sections 49-19-201 through 49-19-227. Those funds appropriated by the Legislature remaining in the special fund at the end of any fiscal year shall lapse into the General Fund, but other funds shall remain in the special fund.

SOURCES: Laws, 1974, ch. 326, § 10; Laws, 1997, ch. 561, § 1, eff from and after July 1, 1997.

Cross References — Allocation of funds from timber privilege tax to forest resources development fund, see § 27-25-11.

MISSISSIPPI PRESCRIBED BURNING ACT

SEC.
49-19-301. Short title.
49-19-303. Legislative findings; purpose.
49-19-305. Definitions.
49-19-307. Regulation of prescribed burns; liability.

§ 49-19-301. Short title.

Sections 49-19-301 through 49-19-307 may be cited as the "Mississippi Prescribed Burning Act."

SOURCES: Laws, 1992, ch. 348, § 1, eff from and after March 1, 1993.

Cross References — Restrictions on, and penalties for, outdoor burning during drought or wildfire conditions, see § 49-19-351.

§ 49-19-303. Legislative findings; purpose.

(1) The application of prescribed burning is a landowner property right and a land management tool that benefits the safety of the public, the environment and the economy of Mississippi. Pursuant thereto, the Legislature finds that:

(a) Prescribed burning reduces naturally occurring vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of major catastrophic wildfire, thereby reducing the threat of loss of life and property, particularly in urbanizing areas.

(b) Most of Mississippi's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.

(c) Forest lands constitute significant economic, biological and aesthetic resources of statewide importance. Prescribed burning on forest land prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling and controls or eliminates certain forest pathogens.

(d) The state manages hundreds of thousands of acres of land for parks, wildlife management areas, forests and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

(e) Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

(f) As Mississippi's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning.

(2) It is the purpose of Sections 49-19-301 through 49-19-307 to authorize and promote the continued use of prescribed burning for ecological, silvicultural and wildlife management purposes.

SOURCES: Laws, 1992, ch. 348, § 2, eff from and after March 1, 1993.

§ 49-19-305. Definitions.

As used in Sections 49-19-301 through 49-19-307 unless the context requires otherwise:

(a) "Prescribed burning" means the controlled application of fire to naturally occurring vegetative fuels for ecological, silvicultural and wildlife management purposes under specified environmental conditions and the following of appropriate precautionary measures which cause the fire to be confined to a predetermined area and accomplishes the planned land management objectives.

(b) "Certified prescribed burn manager" means an individual or county forester who successfully completes the certification program approved by the Mississippi Forestry Commission.

(c) "Prescription" means a written plan for starting and controlling a prescribed burn to accomplish the ecological, silvicultural and wildlife management objectives.

SOURCES: Laws, 1992, ch. 348, § 3, eff from and after March 1, 1993.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the introductory paragraph by substituting "Sections 49-19-301 through 49-19-307" for "this section." The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 49-19-307. Regulation of prescribed burns; liability.

(1) No property owner or his agent, conducting a prescribed burn pursuant to the requirements of this section, shall be liable for damage or injury caused by fire or resulting smoke unless negligence is proven.

(2) Prescribed burning conducted under the provisions of this section shall:

(a) Be accomplished only when at least one (1) certified prescribed burn manager is supervising the burn or burns that are being conducted;

(b) Require that a written prescription be prepared and notarized prior to prescribed burning;

(c) Require that a burning permit be obtained from the Mississippi Forestry Commission; and

(d) Be considered in the public interest and shall not constitute a public or private nuisance when conducted pursuant to state air pollution statutes and rules applicable to prescribed burning.

(3) The Mississippi Forestry Commission shall have the authority to promulgate rules for the certification of prescribed burn managers and guidelines for a prescribed burn prescription.

(4) Nothing in this section shall be construed to limit the civil or criminal liability as provided in Section 97-17-13 and Section 95-5-25, Mississippi Code of 1972.

SOURCES: Laws, 1992, ch. 348, § 4, eff from and after March 1, 1993.

RESTRICTIONS ON OUTDOOR BURNING

SEC.
49-19-351. Restrictions on outdoor burning during drought or wildfire conditions; penalties.

§ 49-19-351. Restrictions on outdoor burning during drought or wildfire conditions; penalties.

(1) In this section, "drought or wildfire conditions" means the existence of a deficit of moisture creating severe conditions with increased wildfire occur-

rences as determined by the State Forestry Commission through use of drought indices or models or the existence of extreme wildfire conditions.

(2) If the State Forestry Commission determines that drought or wildfire conditions exist in a county, the commission shall notify the board of supervisors of that county. The commission may recommend that a temporary outdoor burning ban or other restrictions be adopted by the board of supervisors.

(3) The board of supervisors may, by order, prohibit or restrict outdoor burning in all or part of the unincorporated parts of the county if drought or wildfire conditions have been determined to exist by the State Forestry Commission. An order must specify the period during which burning is restricted. The State Forestry Commission shall notify the board of supervisors when the drought or wildfire conditions no longer exist. Any order issued under this section shall expire upon the determination that the drought or wildfire conditions no longer exist.

(4) Any person who knowingly and willfully violates an order under this section is guilty of a misdemeanor and may be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

(5) The sheriff of the county shall enforce the order and may cite persons for violations of an order under this section.

SOURCES: Laws, 2000, ch. 420, § 1, eff from and after passage (approved Apr. 17, 2000.)

Cross References — Mississippi Prescribed Burning Act, see §§ 49-19-301 et seq.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The statute is not a comprehensive general law regarding county burning bans and does not preempt or supercede local ordinances or regulations regarding the implementation of a county burning ban. Miller, Nov. 17, 2000, A.G. Op. #2000-0520.

FORESTRY INVENTORY AND STRATEGIC PLANNING LAW

SEC.
49-19-401. Short title.
49-19-403. Mississippi Institute for Forest Inventory created within State Forestry Commission; appointment of institute director; advisory board created; membership; chairman; duties; reimbursement of board members; powers of State Forestry Commission.
49-19-405. Duties and responsibilities of Institute.
49-19-407. Outreach and education program.
49-19-408. Limited immunity from criminal trespass for persons conducting forest inventory on private lands for the Mississippi Institute for Forest Inventory.
49-19-409. Repealed.

§ 49-19-401. Short title.

This chapter shall be known as the "Mississippi Forestry Inventory and Strategic Planning Act of 2002."

SOURCES: Laws, 2002, ch. 571, § 1, eff from and after July 1, 2002.

§ 49-19-403. Mississippi Institute for Forest Inventory created within State Forestry Commission; appointment of institute director; advisory board created; membership; chairman; duties; reimbursement of board members; powers of State Forestry Commission.

(1) There is hereby created the Mississippi Institute for Forest Inventory. The institute shall be under the jurisdiction of the State Forestry Commission. The budget of the institute shall be funded through a separate line item within the general appropriation bill for the support and maintenance of the State Forestry Commission.

(2) The institute shall be headed by a director who shall be appointed by the State Forester. The advisory board shall submit three (3) qualified nominees to the State Forester for the position of director. The State Forester shall appoint the director from the list of nominees submitted. The director shall serve at the will and pleasure of the State Forester.

(3)(a) There is hereby created an advisory board to the Mississippi Institute for Forest Inventory. The advisory board shall consist of eleven (11) members. The Director of the Mississippi Automated Resource Information System; the Executive Director of the Mississippi Development Authority, or his designee; the Director of the Forest and Wildlife Research Center at Mississippi State University, or his designee; and the State Forester, or his designee; shall be ex officio members with full voting power.

(b) The Governor shall appoint four (4) members from the state at large with the advice and consent of the Senate. The Governor shall appoint one (1) member from each of the following categories: a private nonindustrial forest landowner, a Mississippi registered forester, a certified wildlife or fisheries biologist, and a representative of an environmental organization. Appointments made after January 1, 2005, shall be for initial terms as follows: a private nonindustrial forest landowner, four (4) years; a Mississippi registered forester, three (3) years; a certified wildlife or fisheries biologist, two (2) years; and a representative of an environmental organization one (1) year. After the expiration of the initial terms, the terms shall be for four (4) years.

(c) The Lieutenant Governor shall appoint three (3) members from the state at large with the advice and consent of the Senate. The Lieutenant Governor shall appoint one (1) member from each of the following categories: the timber harvesting industry, the forest products industry, and a citizen with forestry related interests. Appointments made after January 1, 2005, shall be for initial terms as follows: timber harvesting industry, four (4) years; forest products industry, three (3) years; and a citizen with forestry related interests, two (2) years. After the expiration of the initial terms, the terms shall be for four (4) years.

(d) The advisory board shall elect a chairman from its membership.

(e) The advisory board shall advise, assist and recommend policies that aid the institute in the development and implementation of a statewide forest inventory.

(f) Members of the advisory board may be reimbursed for mileage and actual and necessary expenses as provided under Section 25-3-41.

(g) The Chairman of the Senate Forestry Committee and the Chairman of the House Forestry Committee shall serve as members of the Joint Institute for Forest Inventory Oversight Committee. For attending meetings, the legislators shall receive per diem and expenses from their respective contingent expense funds at the rate authorized for committee meetings when the Legislature is not in session. No per diem and expenses will be paid for attending meetings when the Legislature is in session.

(4) The State Forestry Commission shall have the following powers:

(a) To apply for, accept and expend any funds, grants or gifts from any public or private sources in furtherance of the institute's duties;

(b) To expend funds by appropriation or directly from any federal, local or private sources;

(c) Enter into contracts and execute all instruments to carry out the duties of the institute; and

(d) To do all acts necessary to carry out the duties of the institute.

(5) All funds received by the institute shall be deposited in the State Treasury for the use of the institute.

SOURCES: Laws, 2002, ch. 571, § 2; Laws, 2005, ch. 445, § 1; Laws, 2006, ch. 571, § 1, eff from and after July 1, 2006.

§ 49-19-405. Duties and responsibilities of Institute.

(1) The duties and responsibilities of the Mississippi Institute for Forest Inventory shall include, but are not limited to, the following:

(a) To facilitate the development and implementation of a statewide forest resource inventory necessary for a sustainable forest-based economy on or before July 1, 2004, and thereafter on a continuing basis with updated published data;

(b) Analyze and publish a detailed report of Mississippi's forest resource inventory by January 1, 2005;

(c) Conduct and publish data for subsequent and supporting inventories of forest resources in the years following the initial full inventory;

(d) Develop policies to aid in the implementation of the inventory information and reports;

(e) Submit an annual report to the Legislature on the institute's funding, expenditures, accomplishments and recommendations; and

(f) Analyze and publish data on the volume, quality, size and ownership of forest resources to provide support for new and existing forest industries.

(2)(a) In accomplishing its duties and formulating the recommendations required of it, the institute may elicit the support of and participation by any commercial, industrial, governmental, environmental, minority and public interest organizations or associations, or individual members thereof, and any federal, state and local agencies and political subdivisions as may be necessary or appropriate in the furtherance of the activities of the institute.

(b) The institute may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the state and all such entities are authorized to assist the institute and to provide such support.

SOURCES: Laws, 2002, ch. 571, § 3, eff from and after July 1, 2002.

§ 49-19-407. Outreach and education program.

The Executive Directors of the Mississippi Institute for Forest Inventory, the Mississippi Forestry Commission, the Mississippi Development Authority, the MSU Forest and Wildlife Research Center, and the Cooperative Extension Service shall establish a procedure and guidelines for the coordination of outreach and education programs. It shall be the duty of each agency to cooperate and to promote a coordinated outreach and education program to increase the utilization of private nonindustrial forest landowner forest resources and increase profitability for such resources.

SOURCES: Laws, 2002, ch. 571 , § 4, eff from and after July 1, 2002.

§ 49-19-408. Limited immunity from criminal trespass for persons conducting forest inventory on private lands for the Mississippi Institute for Forest Inventory.

(1) A person may enter in or upon public or private lands or waters, except buildings, while in the lawful performance of forest inventory duties for the Mississippi Institute for Forest Inventory without criminal liability for trespass. The person shall make a good faith attempt to announce and identify himself and his intentions before entering upon private property, and an announcement of such intentions shall be published in the legal notices in a newspaper having a general circulation within the county at least twenty-one (21) days before the date specified for entry upon private property.

(2) This section does not relieve the person from any civil liability that otherwise is actionable at law or in equity, and does not relieve the person from criminal liability for trespass if the entry in or upon the property extends beyond the property or area that is necessary to actually perform the forest inventory duties.

SOURCES: Laws, 2005, ch. 444, § 1, eff from and after passage (approved Mar. 23, 2005.)

§ 49-19-409. Repealed.

Repealed by Laws of 2005, ch. 398, § 1, effective from and after passage March 16, 2005.

[Laws, 2002, ch. 571, § 5, eff from and after July 1, 2002.]

Editor's Note — Former § 49-19-409 provided for the repeal of this chapter, §§ 49-19-401 through 49-19-409.

CHAPTER 20

Mississippi River Timberlands Control Act

Sec.
49-20-1 through 49-20-37. Repealed

§§ 49-20-1 through 49-20-37. Repealed.

Repealed by Laws of 2006, ch. 319, § 1 effective from and after passage (approved March 6, 2006.)

§ 49-20-1. [Laws, 1991, ch. 326 § 1, eff from and after passage (approved March 15, 1991).]

§ 49-20-3. [Laws, 1991, ch. 326 § 2, eff from and after passage (approved March 15, 1991).

§ 49-20-5. [Laws, 1991, ch. 326 § 3, eff from and after passage (approved March 15, 1991).]

§ 49-20-6. [Laws, 1995, ch. 322, § 1, eff from and after passage (approved March 9, 1995).]

§ 49-20-7. [Laws, 1991, ch. 326 § 4, eff from and after passage (approved March 15, 1991).]

§ 49-20-9. [Laws, 1991, ch. 326 § 5, eff from and after passage (approved March 15, 1991).]

§ 49-20-11. [Laws, 1991, ch. 326 § 6, eff from and after passage (approved March 15, 1991).]

§ 49-20-13. [Laws, 1991, ch. 326 § 7, eff from and after passage (approved March 15, 1991).]

§ 49-20-15. [Laws, 1991, ch. 326 § 8, eff from and after passage (approved March 15, 1991).]

§ 49-20-17. [Laws, 1991, ch. 326 § 9, eff from and after passage (approved March 15, 1991).]

§ 49-20-19. [Laws, 1991, ch. 326 § 10, eff from and after passage (approved March 15, 1991).]

§ 49-20-21. [Laws, 1991, ch. 326 § 11, eff from and after passage (approved March 15, 1991).]

§ 49-20-23. [Laws, 1991, ch. 326 § 12, eff from and after passage (approved March 15, 1991).]

§ 49-20-25. [Laws, 1991, ch. 326 § 13, eff from and after passage (approved March 15, 1991).]

§ 49-20-27. [Laws, 1991, ch. 326 § 14, eff from and after passage (approved March 15, 1991).]

§ 49-20-29. [Laws, 1991, ch. 326 § 15, eff from and after passage (approved March 15, 1991).]

§ 49-20-31. [Laws, 1991, ch. 326 § 16, eff from and after passage (approved March 15, 1991).]

§ 49-20-33. [Laws, 1991, ch. 326 § 17, eff from and after passage (approved March 15, 1991).]

§ 49-20-35. [Laws, 1991, ch. 326 § 18, eff from and after passage (approved March 15, 1991).]

§ 49-20-37. [Laws, 1991, ch. 326 § 19, eff from and after passage (approved March 15, 1991).]

Editor's Note — Former § 49-20-1 provided the chapter was to be known as the "Mississippi River Timberlands Control Act of 1991."

Former § 49-20-3 related to the legislative findings.

Former § 49-20-5 provided definitions.

Former § 49-20-6 provided for restrictions on transferring of shares and other securities of river timberlands company.

Former § 49-20-7 provided for restrictions on acquiring voting securities of river timberlands company.

Former § 49-20-9 related to the application of the chapter.

Former § 49-20-11 related to the information required on the notice that a person seeks to acquire ten percent of voting securities of river timberlands company.

Former § 49-20-13 related to required information as to background and identity of persons acquiring ten percent of voting securities of river timberlands company.

Former § 49-20-15 related to the procedures and guidelines for conducting a hearing on proposed acquisitions under Chapter 20.

Former § 49-20-17 related to grounds for disapproval of acquisitions.

Former § 49-20-19 related to burden of proof, grounds for approval of acquisitions, time for making decision, and notice of decision.

Former § 49-20-21 provided that any vote of security acquired in contravention of the chapter was invalid and the acquisition of any security acquired in contravention of the chapter was void.

Former § 49-20-23 provided that the Secretary of State was to administer the chapter and issue regulations.

Former § 49-20-25 related to filing fees, costs of investigations and hearings, assistance of other agencies and contracts for consultative services.

Former § 49-20-27 related to investigations, powers of the Secretary of State, judicial actions, authority of river timberlands company to bring judicial action, private right of action, joint and several liability, limitation of actions, and the designation of Secretary of State as agent for service of process.

Former § 49-20-29 related to penalties.

Former § 49-20-31 provided that the approval of Secretary of State did not constitute recommendation for acquisition.

Former § 49-20-33 related to judicial review of approval or disapproval of acquisition.

Former § 49-20-35 related to the statement declaring corporation to be river timberlands company and the statement as prima facie evidence.

Former § 49-20-37 related to severability of chapter provisions.

CHAPTER 21

Interstate Environmental Compact

Sec.
49-21-1. Enactment; provisions of compact.
49-21-3. Construction.

§ 49-21-1. Enactment; provisions of compact.

The Interstate Environmental Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

ARTICLE 1. Findings, Purposes and Reservations of Power.

(1) **Findings.** —

Signatory states hereby find and declare:

(a) The environment of every state is affected with local, state, regional and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

(2) **Purposes.** —

The purposes of the signatories in enacting this compact are:

(a) To assist and participate in the national environment protection programs as set forth in federal legislation; to promote intergovernmental cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

(3) **Powers of the United States.** —

(a) Nothing contained in this compact shall impair, affect or extend the constitutional authority of the United States.

(b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its consent.

(4) **Powers of the States.** —

Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected except as expressly provided in a supplementary agreement under Article 4.

ARTICLE 2. Short Title, Definitions, Purposes and Limitations.

(1) **Short Title.** — This compact shall be known and may be cited as the Interstate Environmental Compact.

(2) **Definitions.** — For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) "State" shall mean any one of the fifty states of the United States of America and its territories and possessions.

(b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

(c) "Government" shall mean the governments of the United States and the signatory states.

(d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) "Signator" shall mean any state which enters into this compact and is a party thereto.

ARTICLE 3. Intergovernmental Cooperation.

(1) **Agreements with the Federal Government and other Agencies.** —

Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

ARTICLE 4. Supplementary Agreements, Jurisdiction and Enforcement.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this article.

(2) **Recognition of Existing Non-Environmental Intergovernmental Arrangements.** — The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primar-

ily directed to environmental protection purposes as defined herein are not affected by this compact.

(3) **Recognition of Existing Intergovernmental Agreements Directed to Environmental Objectives.** — All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) **Modification of Existing Commissions and Compacts.** — Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) **Recognition of Future Multistate Commissions and Interstate Compacts.** — Nothing in this compact shall be construed to prevent signatories from entering into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

(6) **Supplementary Agreements.** — Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities or duties under this compact of signatories participating therein as embodied in this compact.

(7) **Execution of Supplementary Agreements and Effective Date.** — The governor is authorized to enter into supplementary agreements for the state and his official signature shall render the agreement immediately binding upon the state:

Provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) **Special Supplementary Agreements.** — Signatories may enter into special supplementary agreement with foreign nations for the same purposes and with the same powers as under paragraph (6), article 4, upon

the conditions that such non-signatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the congress.

(9) **Jurisdiction of Signatories Reserved.** — Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

(10) **Complementary Legislation by Signatories.** — Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this article.

(11) **Legal Rights of Signatories.** — Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

ARTICLE 5. Construction, Amendment and Effective Date.

(1) **Construction.** — It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

(2) **Severability.** — The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this compact, or such an agreement is declared to be contrary to the constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

(3) **Amendments.** — Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by congress.

(4) **Effective Date.** — This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

(5) **Withdrawal from the Compact.** — A state may withdraw from this compact by authority of an act of its legislature one (1) year after it

notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

SOURCES: Codes, 1942, § 7106-161; Laws, 1971, ch. 458, § 1, eff from and after passage (approved March 29, 1971).

Comparable Laws from other States — Arkansas: A.C.A. § 8-8-101 et seq.
Florida: Fla. Stat. § 403.60.
Georgia: O.C.G.A. § 12-10-40 et seq.
Kentucky: KRS § 224.18-100 et seq.
Louisiana: La. R.S. 40:2331 et seq.
North Carolina: N.C. Gen. Stat. § 113A-21 et seq.

RESEARCH REFERENCES

ALR. Supreme Court's views as to validity, construction and application of Comprehensive Environmental Response, Compensation, and Liability Act ((CERCLA) (42 U.S.C.S. §§ 9601 et seq.)). 157 A.L.R. Fed. 291.

Requirement that there be continuing violation to maintain citizen suit under federal environmental protection statutes — post-Gwaltney cases. 158 A.L.R. Fed. 519.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.S. § 9613(f)(1): multiple waste streams. 162 A.L.R. Fed. 371.

Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling. 162 A.L.R. Fed. 415.

Validity and construction of statutes regulating strip mining. 162 A.L.R. Fed. 603.

Am Jur. 61B Am. Jur. 2d, Pollution Control §§ 6, 7, 80, 81, 85, 86, 92, 94.

61B Am. Jur. 2d, Pollution Control § 676.

CJS. 93 C.J.S., Waters §§ 93-97.

81A C.J.S., States, § 257.

§ 49-21-3. Construction.

This chapter shall not be construed to authorize the impairment of any constitutional right guaranteed to any person under the constitution of this state nor shall it be construed to authorize the legislature or any other authority to assume any power not possessed by it under the constitution of this state.

SOURCES: Codes, 1942, § 7106-162; Laws, 1971, ch. 458, § 2, eff from and after passage (approved March 29, 1971).

CHAPTER 23

Outdoor Advertising

SEC.
49-23-1. Legislative intent.
49-23-3. Definitions.
49-23-5. Limitations of outdoor advertising devices.
49-23-7. Regulations pertaining to advertising.
49-23-9. Standards for signs erected or maintained in business areas.
49-23-11. Permit required; application and fees.
49-23-13. Bond required; amount.
49-23-15. Removal of nonconforming advertising.
49-23-17. Compensation for removal of advertising.
49-23-19. Unlawful advertising.
49-23-21. Injunctive relief.
49-23-23. Interpretation.
49-23-25. Advertising in safety rest area.
49-23-27. Agreements with the United States authorized.
49-23-29. Apportionment of federal funds.
49-23-31 and 49-23-33. Repealed.
49-23-35. Name or logo of owner of outdoor advertising to be posted upon sign if owner is not the landowner.

§ 49-23-1. Legislative intent.

The Legislature hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to state controlled routes should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty. Any advertising device subject to Sections 49-23-1 through 49-23-29, and found to be in violation thereof, is subject to removal under the state's police power where not contrary to provisions provided herein. It is the intention of the Legislature in such sections to provide a statutory basis for regulation of outdoor advertising consistent with the public policy declared by Congress in areas adjacent to state controlled routes.

SOURCES: Codes, 1942, § 8059.5-01; Laws, 1966, ch. 497, § 1; Laws, 1978, ch. 531, § 1; Laws, 2008, ch. 517, § 1, eff from and after passage (approved May 8, 2008.)

JUDICIAL DECISIONS

1. In general.

Outdoor Advertising Act (Code 1972, §§ 49-23-1 through 49-23-29) does not violate Miss. Const. Art. 3, § 17 or U.S. Const. Amendment 14. Mississippi State Hwy. Comm'n v. Roberts Enters., Inc., 304 So. 2d 637, 81 A.L.R.3d 557 (Miss. 1974).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Advertising §§ 6, 22-24.

CJS. 66 C.J.S., Nuisances § 63.

§ 49-23-3. Definitions.

As used in Sections 49-23-1 through 49-23-29:

(a) "An unzoned commercial or industrial area" is an area determined by actual land uses which is commercial, industrial, marketing or mercantile, along a state controlled route and extending outward along one (1) side of such highway not more than eight hundred (800) feet from the edge of such activity.

(b) "Areas which are zoned industrial or commercial" means an area along a state controlled route that has been zoned or rezoned as industrial or commercial under the authority of any law of this state, which shall include, without limiting the generality of the foregoing, zoning districts customarily referred to as "B" or business, "C" or commercial, "I" or industrial, "M" or manufacturing and "S" or service and all similar classifications.

(c) "Commission" means the Mississippi Transportation Commission.

(d) "Department" means the Mississippi Department of Transportation.

(e) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish an advertising message.

(f) "Great River Road" means that portion of highway located within this state as officially designated by the Federal Highway Administration pursuant to the provisions of Title 23, United States Code, "Highways."

(g) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(i) "Maintenance" means repair, replacement, change, renovation or improvement of any outdoor advertising sign as defined herein. Maintenance shall not include the removal or destruction of any outdoor advertising sign.

(j) "National highway system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(k) "Outdoor advertising" or "outdoor advertising sign" means by outdoor signs, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designated, intended or used to advertise or inform, any part of which is visible from any place on the main-traveled way of a state controlled route.

(*l*) "Primary system" means that portion of connected main highways, as officially designated by the commission, and approved pursuant to the provisions of Title 23, United States Code, "Highways."

(m) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public.

(n) "Scenic byway" means a highway that is designated as a scenic byway under Section 65-41-1 et seq. without regard to qualification as a Federal Scenic Byway, meaning that both "state" scenic byway as well as "federal" scenic byway shall be included under the general category of "scenic byway."

(o) "State controlled routes" means the Interstate System, the Federal Primary System, the National Highway System, the Great River Road and any scenic byways as defined herein along with any additions or deletions thereto as the Federal Highway Administration shall determine by federal statutes or regulations.

SOURCES: Codes, 1942, § 8059.5-02; Laws, 1966, ch. 497, § 2; Laws, 1972, ch. 303, § 1; Laws, 1978, ch. 534, § 2; Laws, 2008, ch. 517, § 2, eff from and after passage (approved May 8, 2008.)

§ 49-23-5. Limitations of outdoor advertising devices.

(1) No outdoor advertising shall be erected or maintained within six hundred sixty (660) feet of the nearest edge of the right-of-way and visible from the main-traveled way of a state controlled route, except the following:

(a) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, as authorized or required by law;

(b) Signs, displays and devices advertising the sale or lease of property upon which they are located;

(c) Signs, displays and devices advertising the principal activities conducted on the property upon which they are located;

(d) Outdoor advertising signs, displays and devices located in areas which are zoned industrial or commercial as defined in Section 49-23-3;

(e) Outdoor advertising signs, displays and devices located in unzoned commercial or industrial areas as defined in Section 49-23-3; and

(f) Signs, displays and devices which locate, identify, mark or warn of the presence of pipelines, utility lines or rail lines and appurtenances thereto, including, but not limited to, markers used in maintenance, operation, observation and safety.

(2) No outdoor advertising shall be erected at or beyond six hundred sixty (660) feet of the nearest edge of the right-of-way outside of urban areas, with

the purpose of their message being read from the main-traveled ways of state controlled routes, except the following:

(a) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices, pertaining to natural wonders, scenic and historic attractions, as authorized or required by law;

(b) Signs, displays and devices advertising the sale or lease of property upon which they are located;

(c) Signs, displays and devices advertising the principal activities conducted on the property upon which they are located.

(3) Signs lawfully in existence on October 22, 1965, as determined by the commission, subject to the concurrence of the United States Secretary of Transportation, to be landmark signs of historic or artistic significance, including signs on farm structures or natural surfaces, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

(4) No outdoor advertising shall be erected along or adjacent to a scenic byway as defined in Section 49-23-3.

(5) No outdoor advertising shall be erected contrary to the restrictions in SECTION 7 of Section 65-3-137.

(6) The board of supervisors of the county, for an outdoor advertising sign that is located outside the corporate limits of any incorporated municipality, and the governing authorities of a municipality, for an outdoor advertising sign that is located within the corporate limits of the municipality, may prohibit any outdoor advertising sign that contains any message or depiction of a sexually explicit nature.

SOURCES: Codes, 1942, § 8059.5-03; Laws, 1966, ch. 497, § 3; Laws, 1976, ch. 438; Laws, 1978, ch. 534, § 3; Laws, 2008, ch. 517, § 3, eff from and after passage (approved May 8, 2008.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the introductory paragraph of (2). The word "of" was substituted for the comma and the word "a" following "ways" and the letter "s" was added to the word "route" so that "...with the purpose of their message being read from the main-traveled ways, a state controlled route, except the following" now reads "...with the purpose of their message being read from the main-traveled ways of state controlled routes, except the following." The Joint Committee ratified the corrections at its August 5, 2008, meeting.

Cross References — Exemption of certain signs specified in this section from requirement that name of owner of sign be posted on sign, see § 49-23-35.

RESEARCH REFERENCES

ALR. Validity of regulations restricting size of free standing advertising signs. 56 A.L.R.3d 1207.

Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.

Validity and construction of provision

prohibiting or regulating advertising sign overhanging street or sidewalk. 80 A.L.R.3d 687.

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 A.L.R.3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 A.L.R.3d 564.

Am Jur. 3 Am. Jur. 2d, Advertising §§ 2, 6, 22-24.

1 Am. Jur. Legal Forms 2d, Advertising §§ 12:186 et seq. (construction and maintenance of outdoor advertising structures).

CJS. 66 C.J.S., Nuisances § 63.

§ 49-23-7. Regulations pertaining to advertising.

The State Highway Commission is hereby authorized to promulgate regulations governing the issuance of permits for the erection and maintenance of outdoor advertising coming within the exceptions contained in subsections (a), (d) and (e) of Section 49-23-5, consistent with the safety and welfare of the traveling public, and as may be necessary to carry out the policy of the state declared in Section 49-23-1, and consistent with the national standards promulgated by the secretary of commerce pursuant to Title 23, United States Code, provided that such regulations shall not contain any definition more restrictive than those set forth in Section 49-23-3; nor shall they be more restrictive than the provisions set forth in Section 49-23-9.

SOURCES: Codes, 1942, § 8059.5-04; Laws, 1966, ch. 497, § 4, eff from and after passage (approved June 15, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

JUDICIAL DECISIONS

1. In general.

A regulation adopted by the State Highway Commission that prohibited outdoor advertising within 500 feet of an interchange or safety rest area on designated highways was authorized by statute and was not more restrictive than was permitted by the Outdoor Advertising Act. Robbins v. Mississippi State Hwy. Comm'n, 369 So. 2d 765 (Miss. 1979).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Advertising §§ 6, 7, 17.

1 Am. Jur. Legal Forms 2d, Advertising §§ 12:186 et seq. (construction and maintenance of outdoor advertising structures).

CJS. 66 C.J.S., Nuisances § 63.

§ 49-23-9. Standards for signs erected or maintained in business areas.

(1) In addition to the authority set out in this chapter, the commission shall have authority to promulgate rules and regulations regarding the

configuration and location of outdoor advertising signs provided for in Section 49-23-5. At a minimum, the rules and regulations shall conform to the national standards promulgated pursuant to Title 23 of the United States Code and the standards set out in an agreement entered into under Section 49-23-27.

(2)(a) For signs erected prior to July 1, 2003, the maximum size of any outdoor sign or other advertising device shall be one thousand two hundred (1,200) square feet;

(b) For sign structures erected on or after July 1, 2003, the maximum area for any one (1) sign face shall be six hundred seventy-two (672) square feet, the maximum height shall be fourteen (14) feet and the maximum length shall be forty-eight (48) feet, inclusive of any border and trim on the sign face, but excluding any embellishment on, and cut-out extension of, the sign face, the base or apron, supports and other structural members. The height of any sign structure shall not exceed forty (40) feet. The height of sign structures erected on or after April 15, 2008, shall not exceed forty (40) feet above the level of the road grade unless the grade of the land adjacent to the road is higher than the level of the road grade, then the height of the sign structure may exceed forty (40) feet above the level of the road grade but shall not exceed forty (40) feet above the grade of the site where the sign is placed. Any embellishment on or cut-out extension of any sign face shall not exceed twenty percent (20%) of the square footage of such sign face.

(3) The area of any sign face shall be measured by the smallest square, rectangle, triangle or circle or combination thereof which will encompass the entire sign.

(4) Sign structures erected on or after July 1, 2003, may contain one (1) or two (2) signs per face and may use only a side-by-side, back-to-back or V-type configuration and no other; provided, however, that if two (2) signs are used facing the same direction, the aggregate total area shall not exceed six hundred seventy-two (672) square feet.

(5) All illuminated outdoor signs or other advertising devices shall be so illuminated as to adhere to the customary practices of the industry in Mississippi and in conformance with national standards. No lighting devices shall be used which in any way imitate any traffic control device, railroad sign or signal, or highway directional signs.

(6) All outdoor signs and other advertising devices located within one-half (½) mile of an intersection of two (2) or more primary highways, or a primary highway and the Great River Road, or an interchange on the interstate system shall be erected and/or maintained with a minimum spacing between structures of five hundred (500) feet, unless separated by another commercial building or structure, other than outdoor advertising, in which case outdoor advertising may be permitted on one or more sides of building or buildings. The minimum spacing requirement of five hundred (500) feet between structures shall not apply to signs in existence on April 15, 2008.

(7) No two (2) signs shall be spaced less than five hundred (500) feet apart, except as to signs in existence on April 15, 2008 , which shall not be removed by Sections 49-23-1 through 49-23-29. This spacing limitation shall apply to

areas within incorporated cities, towns, villages and in zoned and unzoned industrial or commercial areas.

SOURCES: Codes, 1942, § 8059.5-05; Laws, 1966, ch. 497, § 5; Laws, 1972, ch. 303, § 2; Laws, 1978, ch. 534, § 4; Laws, 2002, ch. 518, § 1; Laws, 2008, ch. 517, § 4, eff from and after passage (approved May 8, 2008.)

RESEARCH REFERENCES

ALR. Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 A.L.R.3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 A.L.R.3d 740.

Validity and construction of zoning regulations relating to illuminated signs. 30 A.L.R.5th 549.

Am Jur. 3 Am. Jur. 2d, Advertising §§ 23, 24.

1 Am. Jur. Legal Forms 2d, Advertising §§ 12:186 et seq. (construction and maintenance of outdoor advertising structures).

CJS. 66 C.J.S., Nuisances § 63.

§ 49-23-11. Permit required; application and fees.

(1) No sign, other than signs described in paragraphs (1) (b), (c) and (f) of Section 49-23-5, may be erected without first obtaining a permit from the department, which application for a permit shall be on a form provided by the department and shall contain such information as the department may reasonably require. Upon receipt of an application containing all required information in due form and appropriately executed, and upon payment of the required permit fee, the department shall within ten (10) days thereof issue a permit to the applicant for the erection of the sign, provided such sign will not violate any provision of Sections 49-23-1 through 49-23-29.

(2) An initial permit fee of Eighty-five Dollars ($85.00) for each applicant, regardless of the number of signs at a single site, shall be charged by the Mississippi Department of Transportation for a sign permit initially issued to an applicant after June 30, 1995. An initial permit fee is valid for a period of twelve (12) months and may be renewed annually upon payment by the permittee to the department of a fee of Twenty Dollars ($20.00) per site.

(3) Trees, bushes and vegetation growing at or near permitted sites may be cleared or removed by a permittee, his employee or contractor upon application made to and approved by the department. The department shall charge a permittee a vegetation clearance fee of Fifty Dollars ($50.00) per site each time that the department authorizes vegetation clearance. The commission shall provide for a permitting process in its rules and regulations. Regardless of any rule or regulation to the contrary, the department shall issue a vegetation clearance permit if such is sought for the purpose of reducing the height above road grade of a sign erected prior to July 1, 2003, to forty (40) feet.

(4) Exempt from the payment of any fees under the provisions of subsection (2) or (3) of this section are:

(a) Small business signs. A sign is a small business sign if:

(i) The sign advertises a service or product offered by a business;

(ii) The sign is not located on the premises of the business that offers the product or service;

(iii) The sign does not exceed thirty-two (32) square feet;

(iv) The sign is owned, not leased, by the owner of the business that offers the product or service;

(v) The only information that appears on the sign consists of the product or service that is offered by the business and the name and location of the business; and

(vi) The business that offers the product or service is located at a single site, is operated by the owner and employs no more than two (2) individuals, excluding family members.

(b) Directional signs, public service signs, public utility signs and other official signs and notices approved under rules and regulations adopted by the Mississippi Transportation Commission.

(c) Signs advertising a product or service available from the same premises where the sign is located.

(5) Nothing contained in this section shall be construed to limit in any way the authority of any municipality in which the sign is to be erected, to require a permit from the municipality to be obtained, and the payment of a reasonable permit fee in addition to the fee imposed under this section. However, the governing authorities of any municipality or the board of supervisors of any county may not annually, regularly or intermittently impose any fee or privilege license on any business for its sign or signs that are lawfully located on the business' property and that are lawfully used for the purpose of advertising such business, its products or services. The governing authorities of any municipality or the board of supervisors of any county may impose an initial, reasonable fee on a business for the purpose of ensuring compliance of such sign and the installation thereof with such governing authority's lawful zoning requirements, public safety requirements or sign restrictions, but, under no circumstances may the governing authorities of any municipality or the board of supervisors of any county impose any fee or privilege license on any business for any lawful sign located within the interior of a business.

(6) The money received from the fees paid under this section to the department shall be deposited in the State Highway Maintenance Fund and may be expended, upon legislative appropriation, for any purpose for which other monies in such fund may be expended.

SOURCES: Codes, 1942, § 8059.5-06; Laws, 1966, ch. 497, § 6; Laws, 1995, ch. 626, § 1; Laws, 2004, ch. 332, § 1; Laws, 2008, ch. 517, § 5, eff from and after passage (approved May 8, 2008.)

RESEARCH REFERENCES

ALR. Validity and construction of zoning regulations relating to illuminated signs. 30 A.L.R.5th 549.

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Advertising, Form 23 (complaint, petition, or declaration — Outdoor advertising signs in violation of statute-failure to obtain permit — by public agency).

§ 49-23-13. Bond required; amount.

All persons, partnerships, corporations or other business entities engaging in the outdoor advertising business, except persons erecting signs for personal activities or business, which includes but is not limited to the erection, maintenance and selling of advertising space on and along the highways and public roads of Mississippi, shall be required to provide the Mississippi State Highway Commission a bond under the rules and regulations as promulgated by the highway commission, but provided said bond does not exceed One Thousand Dollars ($1,000.00) in amount.

SOURCES: Codes, 1942, § 8059.5-07; Laws, 1966, ch. 497, § 7, eff from and after passage (approved June 15, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-23-15. Removal of nonconforming advertising.

Any sign, display or device lawfully erected which does not conform to Sections 49-23-1 through 49-23-29 shall be required to be removed before the end of the fifth year after it becomes nonconforming.

SOURCES: Codes, 1942, § 8059.5-08; Laws, 1966, ch. 497, § 8, eff from and after passage (approved June 15, 1966).

§ 49-23-17. Compensation for removal of advertising.

(1) The Mississippi Transportation Commission is authorized to acquire by purchase, gift or condemnation, all advertising devices and any property rights pertaining thereto, when such advertising devices are required to be removed under the provisions of Section 49-23-15. Just compensation shall be paid for the acquisition and for the removal of any outdoor advertising lawfully erected as defined in Section 131 of Title 23, United States Code, as amended, that is required to be removed under the provisions of Section 49-23-15. The use of amortization for whatever period shall not constitute just compensation.

(2) If any political subdivision or other governmental agency requires the removal of any outdoor advertising sign lawfully erected, just compensation shall be paid to the owner of the sign for the cost of removal plus the fair

market value of the sign removed. The use of amortization for whatever period shall not constitute just compensation.

(3) Damages resulting from any taking in eminent domain shall be ascertained in the manner presently provided by law, or in such manner as the Legislature may hereafter provide, and shall be limited to:

(a) The taking from the owner of such sign, display or device of all right, title, leasehold and interest in such sign, display or device; and

(b) The taking from the owner of the real property on which the sign, display or device is located, of the right to erect and maintain such signs, displays and devices thereon, less enhancement of the property remaining by reason of removal of such sign, display or device and special benefits resulting therefrom.

(4) This section shall not apply to any on-premises sign ordinance adopted by a political subdivision or other governmental agency before May 15, 1992.

SOURCES: Codes, 1942, § 8059.5-09; Laws, 1966, ch. 497, § 9; Laws, 1980, ch. 344; Laws, 1992, ch. 570, § 1; Laws, 1994, ch. 460, § 1; Laws, 1994, ch. 630, § 3, eff from and after passage (approved April 8, 1994).

Cross References — Powers and duties of the highway commission, generally, see § 65-1-8.

ATTORNEY GENERAL OPINIONS

Statute applies only to outdoor advertising signs located along interstate or primary highways in Mississippi or Great River Road and does not apply to all outdoor advertising signs within municipality; if city finds as fact that ownership interest in and use of any sign preexisted adoption of ordinance and is in fact preexisting and nonconforming use, such use creates constitutionally protected property interest and such use would therefore be exempt from new ordinance provisions. Leslie, May 23, 1990, A.G. Op. #90-0322.

Section 49-23-17 is concerned with what is to be done when outdoor advertising sign fails to conform with provisions outlined in Sections 49-23-1 et seq. and does not contemplate situation where municipality simply decides not to renew lease for use of municipal property. Ellis, March 3, 1994, A.G. Op. #93-0835.

RESEARCH REFERENCES

ALR. Eminent domain: determination of just compensation for condemnation of billboards or other advertising signs. 73 A.L.R.3d 1122.

§ 49-23-19. Unlawful advertising.

Any advertising device or outdoor advertising erected which is contrary to the provisions of Sections 49-23-1 through 49-23-29 or regulations lawfully adopted hereunder is hereby declared to be a public nuisance. The state highway commission shall give thirty (30) days' notice by certified mail to the owner of such advertising device and landowner to remove same if it is a prohibited device or cause it to conform to regulations if it is an authorized device. Failure to receive the notice shall not prohibit the State Highway

Commission from removing the unlawful outdoor advertising device. If the owner of the outdoor advertising device fails or refuses to remove same within thirty (30) days as required in the notice, the State Highway Commission may proceed to secure the removal of same as authorized in Section 49-23-21.

SOURCES: Codes, 1942, § 8059.5-10; Laws, 1966, ch. 497, § 10, eff from and after passage (approved June 15, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

ALR. Billboards and other outdoor advertising signs as civil nuisance. 38 A.L.R.3d 647.

Validity and construction of ordinance prohibiting roof signs. 76 A.L.R.3d 1162.

Am Jur. 3 Am. Jur. 2d, Advertising §§ 28, 29.

CJS. 66 C.J.S., Nuisances § 63.

§ 49-23-21. Injunctive relief.

In addition to the remedies provided in Sections 49-23-1 through 49-23-29, Mississippi Code of 1972, and which may otherwise exist under the laws of this state, the State Highway Commission is authorized to petition the chancery court of any county where any unlawful or unauthorized outdoor advertising sign, device or display may exist for injunctive or other appropriate relief. The owner or owners of each and every outdoor advertising sign, device or display shall be deemed to be doing business within this state in each and every county in which such owner or owners shall have erected, or cause to be erected, or maintained, and there shall continue to exist, an outdoor advertising sign, device or display. Once jurisdiction over the parties is obtained, such chancery court shall have such jurisdiction over the parties as is necessary in order to determine if any of said owner or owners' outdoor advertising is in violation of the provisions of this chapter, and to enforce the provisions of this chapter, as to each and every outdoor advertising sign, device or display of such owner or owners within this state, wheresoever located. However, any such action shall be res adjudicata only as to the outdoor advertising signs, devices or displays specifically made a part of such action; and the State Highway Commission shall be authorized and empowered to maintain any and all other actions as to other outdoor advertising of such owner or owners wheresoever located, but not specifically made a part of a previous action. The court may award costs of any action brought under this section, including court costs, expenses and reasonable attorney's fees, to the prevailing party.

SOURCES: Codes, 1942, § 8059.5-11; Laws, 1966, ch. 497, § 11; Laws, 1977, ch. 433; Laws, 1980, ch. 347, eff from and after July 1, 1980.

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Injunctions generally, see §§ 11-13-1 et seq.

Compensation for removal of outdoor advertising, see § 49-23-17.

§ 49-23-23. Interpretation.

Nothing in Sections 49-23-1 through 49-23-29, shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which are more restrictive than the provisions of such sections.

SOURCES: Codes, 1942, § 8059.5-12; Laws, 1966, ch. 497, § 12, eff from and after passage (approved June 15, 1966).

RESEARCH REFERENCES

ALR. Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 A.L.R.3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 A.L.R.3d 564.

§ 49-23-25. Advertising in safety rest area.

In order to provide information in the specific interest of the traveling public, the State Highway Commission is hereby authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas, and to establish information centers at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as may be considered desirable.

SOURCES: Codes, 1942, § 8059.5-13; Laws, 1966, ch. 497, § 13, eff from and after passage (approved June 15, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-23-27. Agreements with the United States authorized.

The State Highway Commission is hereby authorized to enter into agreements with the United States Secretary of Commerce as provided by Title 23, United States Code, relating to the control of outdoor advertising in areas adjacent to the interstate and primary highway systems, including the establishment of information centers at safety rest areas, and to take action in the name of the state to comply with the terms of such agreement, provided that the state highway commission shall not have power to enter into any agreement calling for more restrictive control of outdoor advertising than that provided for in Sections 49-23-1 through 49-23-29.

SOURCES: Codes, 1942, § 8059.5-14; Laws, 1966, ch. 497, § 14, eff from and after passage (approved June 15, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-23-29. Apportionment of federal funds.

Federal funds appropriated to carry out the provisions of Sections 49-23-1 through 49-23-29 are to be apportioned to the commissioners' districts in the same manner as said federal funds are apportioned to the state, and matching state funds are to be apportioned to the commissioners' districts proportionately.

SOURCES: Codes, 1942, § 8059.5-15; Laws, 1966, ch. 497, § 15, eff from and after passage (approved June 15, 1966).

§§ 49-23-31 and 49-23-33. Repealed.

Repealed by Laws of 1978, ch. 346, § 1, eff from and after July 1, 1978.
§ 49-23-31. [Codes, 1942, § 8159; Laws, 1938, ch. 200]
§ 49-23-33. [Codes, 1942, § 2021; Laws, 1932, ch. 284]

Editor's Note — Former § 49-23-31 related to the display of unauthorized signs. Former § 49-23-33 contained advertising restrictions for billboards.

§ 49-23-35. Name or logo of owner of outdoor advertising to be posted upon sign if owner is not the landowner.

There shall be posted upon every outdoor advertising sign, display or device erected or maintained adjacent to any highway constituting a part of the interstate or primary system of highways and restricted or regulated by Sections 49-23-1 through 49-23-33, Mississippi Code of 1972, except those signs, displays or devices as specified in subsections (1)(a), (b), (c) and (f), and (2)(a), (b) and (c) of Section 49-23-5, Mississippi Code of 1972, the name or logo of the owner of such sign, display or device if the owner of such outdoor advertising is separate and distinct from the owner of the real property upon which such outdoor advertising is located.

The name or logo of the owner shall be permanently written on each such outdoor advertising sign, display or device if it is the intention of the parties that ownership of such outdoor advertising is, and shall be, separate from the ownership of the real property upon which it is situated.

Each such outdoor advertising sign, display or device heretofore or hereafter erected or maintained without such notice of ownership being posted as aforesaid shall be construed to have attached to the real estate and to be owned by the owner of the real estate upon which the said outdoor advertising is located.

SOURCES: Laws, 1977, ch. 370, eff from and after July 1, 1977.

Editor's Note — Section 49-23-33 referred to in this section was repealed by Laws of 1978, ch. 346, § 1, eff from and after July 1, 1978.

CHAPTER 25

Junkyards

Sec.
49-25-1. Short title.
49-25-3. Purposes of chapter.
49-25-5. Definitions.
49-25-7. Prohibited operations; exceptions.
49-25-9. Junkyards lawfully in existence.
49-25-11. Regulatory authority.
49-25-13. Authority to acquire interest in land in removal and screening of junkyards.
49-25-15. Nonconforming junkyards; limitation upon continued existence.
49-25-17. Enforcement provision.
49-25-19. Interpretation.
49-25-21. Agreements with United States authorized.
49-25-23. Apportionment of federal funds.

§ 49-25-1. Short title.

This chapter may be cited as the "Junkyard Control Law."

SOURCES: Codes, 1942, § 8059.5-31; Laws, 1966, ch. 399, § 1, eff from and after passage (approved June 16, 1966).

§ 49-25-3. Purposes of chapter.

For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary highway systems within this state. The legislature hereby finds and declares that junkyards which do not conform to the requirements of this chapter are public nuisances.

SOURCES: Codes, 1942, § 8059.5-32; Laws, 1966, ch. 399, § 2, eff from and after passage (approved June 16, 1966).

RESEARCH REFERENCES

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions § 78.

CJS. 66 C.J.S., Nuisances §§ 121-126.

§ 49-25-5. Definitions.

(a) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(b) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

(c) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(d) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of commerce, pursuant to the provisions of Title 23, United States Code, "Highway."

(e) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of commerce, pursuant to the provisions of Title 23, United States Code, "Highways."

SOURCES: Codes, 1942, § 8059.5-33; Laws, 1966, ch. 399, § 3, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

ALR. Classification and maintenance of advertising structures as nonconforming use. 80 A.L.R.3d 630.

Am Jur. 25 Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Form 67.1 (complaint, petition, or declaration by municipality against operator of junkyard to enjoin violation of zoning ordinance, operation and expansion of unlicensed junkyard).

§ 49-25-7. Prohibited operations; exceptions.

No person shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

(a) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the system, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the State Highway Commission.

(d) Those which are not visible from the main-traveled way of the system.

SOURCES: Codes, 1942, § 8059.5-34; Laws, 1966, ch. 399, § 4, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Removal of nonconforming junkyard, see §§ 49-25-15, 49-25-17.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Form 67.1 (complaint, petition, or declaration by municipality against operator of junkyard to enjoin violation of zoning ordinance, operation and expansion of unlicensed junkyard).

§ 49-25-9. Junkyards lawfully in existence.

Any junkyard lawfully in existence on June 16, 1966, which is within one thousand (1,000) feet of the nearest edge of the right-of-way and visible from the main-traveled way of any highway on the interstate or primary system shall be screened, if feasible, by the state highway commission at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main-traveled way of such highways.

SOURCES: Codes, 1942, § 8059.5-35; Laws, 1966, ch. 399, § 5, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-25-11. Regulatory authority.

The State Highway Commission shall have the authority to promulgate rules and regulations governing the location, planting, construction and maintenance, including the materials used in screening or fencing required by this chapter.

SOURCES: Codes, 1942, § 8059.5-36; Laws, 1966, ch. 399, § 6, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-25-13. Authority to acquire interest in land in removal and screening of junkyards.

When the State Highway Commission determines that the topography of the land adjoining the highways will not permit adequate screening of junkyards, or the screening of such junkyards would not be economically feasible, the State Highway Commission shall have the authority to acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the removal or disposal of the junkyards, and to pay just compensation for the costs of relocation, removal or disposal thereof. When the state highway commission determines that it is in the best interest of the state, it may acquire such lands, or interest in lands, outside highway rights-of-way as may be necessary to provide adequate screening of such junkyards.

SOURCES: Codes, 1942, § 8059.5-37; Laws, 1966, ch. 399, § 7, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 49-25-15. Nonconforming junkyards; limitation upon continued existence.

Any junkyard lawfully in existence on June 16, 1966, which does not conform to the exceptions contained in Section 49-25-7, or that cannot be made to so conform by screening as provided in this chapter, shall be required to be removed under Section 49-25-13 by July 1, 1970, or as soon thereafter as funds are available for that purpose. Any junkyard located along any highway made a part of the interstate or primary system after June 16, 1966, shall be considered to have been lawfully established for the purposes of this chapter; and in the event any such junkyard does not conform to the exceptions in Section 49-25-7, or cannot be made to so conform by screening as provided in this chapter, it shall be required to be removed under Section 49-25-13 by the end of the fourth year after it shall be determined that it is nonconforming or as soon thereafter as funds are available for that purpose.

SOURCES: Codes, 1942, § 8059.5-38; Laws, 1966, ch. 399, § 8, eff from and after passage (approved June 16, 1966).

§ 49-25-17. Enforcement provision.

Any person, partnership or corporation that seeks to establish, or establishes, a junkyard within one thousand (1,000) feet of the nearest right-of-way line of any interstate or primary highway that does not come within one or more of the exceptions contained in Section 49-25-7, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding Five Hundred Dollars ($500.00) for any such offense. Each day's presence of the junkyard within the prohibited distance shall be a separate offense for the purpose of the penalty provision. In addition thereto, the State Highway Commission may seek injunctive relief in the courts of the county in which said junkyard may be located to abate the said nuisance and to require the removal of all junk from the prohibited area.

SOURCES: Codes, 1942, § 8059.5-39; Laws, 1966, ch. 399, § 9, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions § 78.

CJS. 66 C.J.S., Nuisances §§ 121-126.

§ 49-25-19. Interpretation.

Nothing in this chapter shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which are more restrictive than the provisions of this chapter.

SOURCES: Codes, 1942, § 8059.5-40; Laws, 1966, ch. 399, § 10, eff from and after passage (approved June 16, 1966).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Pl & Pr Forms (Rev), Zoning and Planning, Form 67.1 (complaint, petition, or declaration by municipality against operator of junkyard to enjoin violation of zoning ordinance, operation and expansion of unlicensed junkyard).

§ 49-25-21. Agreements with United States authorized.

The State Highway Commission is hereby authorized to enter into agreements with the United States Secretary of Commerce as provided by Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of such agreement.

SOURCES: Codes, 1942, § 8059.5-41; Laws, 1966, ch. 399, § 11, eff from and after passage (approved June 16, 1966).

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Powers and duties of Mississippi Transportation Commission, see § 65-1-8.

§ 49-25-23. Apportionment of federal funds.

Federal funds appropriated to carry out the provisions of this chapter are to be apportioned to the commissioners' districts in the same manner as such federal funds are apportioned to the state, and matching state funds are to be apportioned to the commissioners' districts proportionately.

SOURCES: Codes, 1942, § 8059.5-42; Laws, 1966, ch. 399, § 12, eff from and after passage (approved June 16, 1966).

CHAPTER 26

Channel Maintenance Act

Sec.	
49-26-1.	Short title.
49-26-3.	Legislative findings and declarations.
49-26-5.	Duties and Department of Marine Resources.
49-26-7.	Identification and pursuit of federal funding alternatives.

§ 49-26-1. Short title.

This chapter shall be known and may be cited as the "Channel Maintenance Act."

SOURCES: Laws, 2000, ch. 604, § 1, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 604, § 5, provides as follows:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2001."

§ 49-26-3. Legislative findings and declarations.

The Legislature finds that channel maintenance is necessary to preserve and enhance the economic stability and recreational potential of the coastal region. The Legislature declares it to be a governmental responsibility to provide for proper channel maintenance. The Legislature further declares that channel maintenance projects are in the public interest. Those projects should be funded to promote the use of cost-efficient strategies, encourage coordination among federal, state and local governments and the private sector, provide for long-term solutions and minimize the impact of the environment to the extent possible.

SOURCES: Laws, 2000, ch. 604, § 2, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 604, § 5, provides as follows:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2001."

§ 49-26-5. Duties and Department of Marine Resources.

(1) The Department of Marine Resources, referred to in this chapter as "department," shall serve as the primary state agency with regard to coordinating channel maintenance activities along the Mississippi Gulf Coast.

(2) The department shall develop a comprehensive long-range management plan for channel maintenance activities. The plan shall at a minimum:

(a) Identify areas in which channels are in need of maintenance;

(b) Assess the short-term and long-term economic costs and benefits of the state's channels;

(c) Promote channel sand bypassing to replicate the natural flow of sand; and

(d) Recommend channel maintenance projects to the Legislature for funding which ensures the geographic coordination and sequencing of prioritized projects.

SOURCES: Laws, 2000, ch. 604, § 3, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 604, § 5, provides as follows:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2001."

§ 49-26-7. Identification and pursuit of federal funding alternatives.

The department shall identify federal funding mechanisms which could be used to fund projects regarding channel maintenance. The department shall coordinate with local governments and other interest groups to maximize the eligibility of projects for funding and to assist in the preparation of appropriate financial assistance documentation.

SOURCES: Laws, 2000, ch. 604, § 4, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 604, § 5, provides as follows:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2001."

CHAPTER 27

Coastal Wetlands Protection Act

Sec.
49-27-1. Title and citation of chapter.
49-27-3. Public policy declared.
49-27-5. Definitions.
49-27-6. Marinas; classification.
49-27-7. Chapter inapplicable to certain activities, areas and entities; exempt activities, areas and entities to adhere to declared public policy; exempt entities to notify commission of activities.
49-27-9. Permit required to conduct regulated activity; filing and form of application; fee.
49-27-11. Application; contents.
49-27-13. Application; copy may be mailed to parties.
49-27-15. Application; notice of date for filing objections; hearing and notice of hearing; payment of publication fees and costs of providing notice to public.
49-27-17. Application; notice to parties prior to date set for hearing; effect of failure to comply with section.
49-27-19. Application; appearance at hearing by person filing objection; applicant's burden of proof and right to hearing.
49-27-21. Public inspection of evidence, applications and related documents; record and transcription of oral testimony.
49-27-23. Commission authorized to grant, issue, reissue, modify, deny, suspend, revoke, limit, or condition permits; expressed public policy to be considered in connection with permits; acquisition of permits; resolution of conflicts.
49-27-25. Repealed.
49-27-27. Permits to dredge new channels; considerations and restrictions.
49-27-29. Conditions or limitations may be imposed on grant or modification of permit.
49-27-31. Performance bond may be required.
49-27-33. Suspension or revocation of permit after notice and hearing.
49-27-35. Findings, reasons and descriptions to be recorded by council.
49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties; time; extensions.
49-27-39. Appeal to chancery court; when council's order to be confirmed.
49-27-41. Appeal to chancery court; complaint; return date; cost bond; record; appeal with supersedeas.
49-27-43. Appeal to chancery court; service upon commission; certification of record.
49-27-45. Appeal to chancery court; when case to be referred back to commission.
49-27-47. Appeal to chancery court; precedence; powers of chancellor.
49-27-49. Appeal to Supreme Court.
49-27-51. After-the-fact authorization for work upon proper application; civil and criminal actions; who may initiate.
49-27-53. Jurisdiction and venue for judicial actions.
49-27-55. Civil liability of violators; restoration; punitive damages; mandatory injunction; jurisdiction of circuit or county court; remedies preserved.
49-27-57. Fines and penalties.
49-27-59. Rules and regulations.
49-27-61. Charges for materials removed under permit; alternative for dredge material disposal.

49-27-63. Inspections.
49-27-65. Evaluation of coastal wetlands; charts; education of public; overall use plan.
49-27-67. Exclusion from assessment for ad valorem taxes.
49-27-69. Disposition of fees and other sums.
49-27-71. Removal of derelict vessels from manmade canal with navigable connection to coastal wetlands; immediate removal of sunken or submerged vessels creating hazard to navigation.

§ 49-27-1. Title and citation of chapter.

This chapter is to be known as the "Coastal Wetlands Protection Act" and may also be cited by its common or popular name of "Wetlands Act."

SOURCES: Laws, 1973, ch. 385, § 1, eff from and after July 1, 1973.

Cross References — Proceeds from leases of sixteenth section school lands or lieu lands located in area defined as coastal wetlands, see § 29-7-14.

Public Trust Tidelands regulations, see §§ 29-15-1 et seq.

Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

Acquisition by highway commission of wetlands to mitigate loss of wetlands due to development and use, see § 65-1-51.

RESEARCH REFERENCES

Law Reviews. Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C. L. Rev. 5, Fall 1990.

Rychlak, Thermal expansion, melting glaciers, and rising tides: the public trust in Mississippi. 11 Miss. C. L. Rev. 95, Fall 1990.

Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

Three Years After SWANCC: Still Wading Through the Jurisdictional Gap Created by the United States Supreme Court, 23 Miss. C. L. Rev. 75, Fall, 2003.

§ 49-27-3. Public policy declared.

It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which coastal wetlands are held.

SOURCES: Laws, 1973, ch. 385, § 2, eff from and after July 1, 1973.

Cross References — Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

After-the-fact authorization for work done in accordance with policy stated in this section, see § 49-27-51.

Required preparation and implementation of coastal area plan by marine resources council that would further public policy expressed by this section, see § 57-15-6.

Leasing or use for commercial, port and industrial development purposes of certain submerged lands and tidelands in furtherance of the policy set forth in this section, see § 59-1-17.

Leasing for the development of port and related industrial facilities in furtherance of the policy set forth in this section, see § 59-9-21.

JUDICIAL DECISIONS

1. Higher public purpose.

Trial court erred in ruling in favor of the State regarding a dispute over land under Miss. Code Ann. § 29-15-7 consisting of artificial accretions on which appellants had built a hotel because the state failed to prove by a preponderance of the evidence that the accretions above the high water line were not done pursuant to a constitutional legislative enactment and for a higher public purpose under Miss. Code Ann. § 49-27-3 and Miss. Code Ann. § 29-15-3(1). Bayview Land, Ltd. v. State, 950 So. 2d 966 (Miss. 2006).

§ 49-27-5. Definitions.

(a) "Coastal wetlands" means all publicly-owned lands subject to the ebb and flow of the tide; which are below the watermark of ordinary high tide; all publicly-owned accretions above the watermark of ordinary high tide and all publicly-owned submerged water-bottoms below the watermark of ordinary high tide and includes the flora and fauna on the wetlands and in the wetlands.

(b) "Department" means the Department of Marine Resources.

(c) "Regulated activity" means any of the following activities:

(i) The dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland;

(ii) The dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands;

(iii) Killing or materially damaging any flora or fauna on or in any coastal wetland;

(iv) The erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and

(v) The erection of any structure or structures on suitable sites for water dependent industry.

(d) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands.

(e) "Executive director" means the Executive Director of the Department of Marine Resources.

(f) "Filling" means either the displacement of waters by the deposition into coastal wetlands of soil, sand, gravel, shells or other material; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.

(g) "Person" means any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality or political subdivision, or any other corporation of any character whatsoever.

(h) "Commission" means the Mississippi Commission on Marine Resources.

(i) "Water dependent industry" means those commercial, industrial or manufacturing activities which, for purposes basic to their existence must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast. "Suitable sites for water dependent industry" means those areas of land which are suitable for the development of water dependent industry because of their proximity to waters of navigable depth, size and configuration, topography, soil conditions and access to other means of transportation. After consultation with local governments, port authorities, development commissions, port and harbor commissions and other interested parties, and after full consideration of zoning ordinances duly adopted by local governments, the commission shall designate those sites it deems suitable for water dependent industry. The definition of "suitable sites for water dependent industry" shall be limited to, but not necessarily inclusive of, waterfront sites owned by county port authorities, development commissions and port and harbor commissions, and to areas that are now or are later made to be within one thousand (1,000) feet of the centerline of any natural or maintained channel having a depth of seven (7) feet or greater at mean low water. However, additional sites may be included in the definition of suitable sites for water dependent industry with the concurrence of the board of supervisors in the county affected.

SOURCES: Laws, 1973, ch. 385, § 3; Laws, 1974, ch. 401, § 1; Laws, 1979, ch. 492, § 2; Laws, 1994, ch. 578, § 28; Laws, 2005, ch. 371, § 1, eff from and after July 1, 2005.

Editor's Note — Laws of 1979, ch. 492, § 1, provides as follows:

"SECTION 1. It is the intent of the Legislature:

"(a) That the economic, environmental, scenic, historical and archaeological resources of the coastal area should be protected or utilized, as appropriate, in the best interests of the citizens of Mississippi;

"(b) That the processing and issuing of permits, licenses and other such instruments should be streamlined to reduce costly delays;

"(c) That duplication of effort and unnecessary governmental red tape should be eliminated; and

"(d) That state policy should be carried out in an effective, efficient, predictable and consistent manner."

Cross References — Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

JUDICIAL DECISIONS

1. Property only partially within definition of "coastal wetlands."

Chancellor's decision that reversed the decision of the of the Commission on Marine Resources which denied plaintiff landowners' request for a for a wetlands permit to build a pier addition and fill part of a marsh for a parking lot was upheld where the property was not fully in the jurisdiction of the Mississippi Department of Marine Resources as only a small portion of it was affected by the high mean tide under Miss. Code Ann. § 49-27-5(a). Miss. Dep't of Marine Res. v. Brown, — So.

2d —, 2003 Miss. App. LEXIS 1185 (Miss. Ct. App. Dec. 16, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 649, 2004 Miss. App. LEXIS 491 (Miss. Ct. App. 2004).

§ 49-27-6. Marinas; classification.

For purposes of this chapter, the following terms shall have the meanings ascribed to them in this section:

(a) "Marina" means a facility providing more than twelve (12) mooring spaces for boats that may provide supplies and services including electricity, fresh water, fuel or sewage collection facilities.

(b) "Public marina" means a marina that offers mooring spaces and docking facilities for lease by the general public. Public marinas include recreational and commercial marinas, and they require a "C" for commercial or "I" for industrial use designation.

(c) "Private single-family or multi-family pier" means a pier that is part of an adjacent single-family home subdivision or multi-family condominium or apartment development that provides mooring spaces and docking facilities restricted for use by only home owners or tenants of the adjacent development. Private single-family and multi-family piers with twelve (12) or fewer mooring spaces are compatible with a "G" for general use designation. Private single-family and multi-family piers with more than twelve (12) mooring spaces require a "C" for commercial use designation. Commercial vessels may not be moored in a multi-family pier.

(d) "Yacht club marina" means a marina that restricts mooring spaces and docking facilities to members only of a private association organization. Yacht clubs require a "C" for commercial or "I" for industrial use designation.

SOURCES: Laws, 2004, ch. 428, § 1; Laws, 2005, ch. 424, § 1, eff from and after passage (approved Mar. 21, 2005.)

§ 49-27-7. Chapter inapplicable to certain activities, areas and entities; exempt activities, areas and entities to adhere to declared public policy; exempt entities to notify commission of activities.

This chapter shall not apply to the following activities, areas and entities:

(a) The accomplishment of emergency decrees of any duly appointed health officer of a county or municipality or of the state, acting to protect the public health;

(b) The conservation, repletion and research activities of the Commission on Marine Resources, the Mississippi Gulf Coast Research Laboratory, the Commission on Wildlife, Fisheries and Parks, and the Mississippi-Alabama Sea Grant Consortium when acting through the Mississippi Universities Marine Center;

(c) Hunting, erecting duck blinds, fishing, shellfishing and trapping when and where otherwise permitted by law;

(d) Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands;

(e) The exercise of riparian rights by the owner of the riparian rights, if the construction and maintenance of piers, boathouses and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide. The riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels;

(f) The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of this chapter, and all interstate highways planned but not yet under construction; and financed in part by Federal Interstate Highway Trust Funds;

(g) Wetlands developed in the future by federal, state or county governments for the establishment of a superport or a pipeline buoy terminal for deep-draft, ocean-going vessels, including but not limited to, wetlands adjacent to Petit Bois Island and the Bayou Casotte Channel in Jackson County, Mississippi;

(h) The Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commission, Pass Christian Port Commission, Pascagoula Port Commission, and any municipal or local port authorities;

(i) Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954;

(j) Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi;

(k) Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi;

(*l*) The Fisherman's Wharf in Biloxi and the Buccaneer State Park in Hancock County;

(m) Wetlands conveyed by the state for industrial development thereon pursuant to Section 211, Mississippi Constitution of 1890, and pursuant to Section 29-3-61, Mississippi Code of 1972;

(n) The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction;

(o) The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction;

(p) The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction;

(q) The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction; and

(r) In the case of regulated activities which, in the judgment of the director or his delegate, after an on-site inspection, have no harmful impact on the environment and which make no substantial change in the wetlands, the director may issue a certificate of waiver, and no permit shall be required.

All activities, areas and entities exempt from the regulatory provisions, whether by name or reference, when carrying out what would otherwise be regulated activities in coastal wetlands shall at all times adhere to the policy as set forth in Section 49-27-3. Each entity shall notify the commission of all such activities so that the commission may be fully advised of all activities in the coastal wetlands.

SOURCES: Laws, 1973, ch. 385, § 4; Laws, 1974, ch. 401, § 2; Laws, 1995, ch. 453, § 1; Laws, 2000, ch. 394, § 2; Laws, 2000, ch. 516, § 89, eff from and after passage (approved Apr. 30, 2000.)

Joint Legislative Committee Note — Section 2 of ch. 394, Laws of 2000, effective from and after its passage (approved April 17, 2000), amended this section. Section 89 of ch. 516, Laws of 2000, effective from and after its passage (approved April 30, 2000), also amended this section. As set out above, this section reflects the language of Section 89 of ch. 516, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Section 29-3-61, referred to in item (m), was repealed by Laws of 1978, ch. 525, § 55, eff from and after July 1, 1978.

Cross References — Prohibition against pollution of waters, streams and air, see §§ 49-17-1 et seq.

JUDICIAL DECISIONS

1. No obstruction of ebb and flow.

In contesting a wetlands permit defendant Mississippi Department of Marine Resources failed to show an adverse impact due to the landowner's construction of a pier addition, given that a future boat ramp for larger vessels was planned for the same area, thus, the chancellor's decision reversing the decision of the Commission on Marine Resources denying plaintiff landowners' request for a wetlands permit to build a pier addition and fill part of a marsh for a parking lot was supported by substantial evidence; the construction would not obstruct the ebb and flow of the tide, an exception described in Miss. Code Ann. § 49-27-7(e). Miss. Dep't of Marine Res. v. Brown, — So. 2d —, 2003 Miss. App. LEXIS 1185 (Miss. Ct. App. Dec. 16, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 649, 2004 Miss. App. LEXIS 491 (Miss. Ct. App. 2004).

§ 49-27-9. Permit required to conduct regulated activity; filing and form of application; fee.

(1) No regulated activity shall affect any coastal wetlands without a permit unless excluded in Section 49-27-7. Any person proposing to conduct or cause to be conducted a regulated activity shall file an application for a permit with the commission in such form and with such information as the commission may prescribe. An application fee in an amount of Fifty Dollars ($50.00) for residential type regulated activity and Five Hundred Dollars ($500.00) for commercial and industrial type related activity shall accompany each application and shall be payable to the commission. No permit shall be required for a regulated activity as defined in Section 49-27-5(c)(v) if such activity is an activity by a water dependent industry, nor shall a permit be required

pursuant to Section 49-27-5(c)(v) of any individual who seeks to construct a home, fishing camp or similar structure on his own property.

(2) If the commission determines that the activity, area or entity is exempt or requires no permit, and that the activity, area or entity complies with the notification requirement and the coastal wetland policy as required under Section 49-27-7, the commission may reduce the application fee by fifty percent (50%).

SOURCES: Laws, 1973, ch. 385, § 5(a); Laws, 1979, ch. 492, § 3; Laws, 1980, ch. 302; Laws, 1986, ch. 408, § 2; Laws, 1994, ch. 578, § 29; Laws, 2000, ch. 394, § 1, eff from and after passage (approved Apr. 17, 2000.)

Editor's Note — Laws of 1979, ch. 492, §§ 1 and 6, provide as follows:

"SECTION 1. It is the intent of the Legislature:

"(a) That the economic, environmental, scenic, historical and archaeological resources of the coastal area should be protected or utilized, as appropriate, in the best interests of the citizens of Mississippi;

"(b) That the processing and issuing of permits, licenses and other such instruments should be streamlined to reduce costly delays;

"(c) That duplication of effort and unnecessary governmental red tape should be eliminated; and

"(d) That state policy should be carried out in an effective, efficient, predictable and consistent manner.

"SECTION 6. Permits issued pursuant to the existing statutory authority of the state oil and gas board for the location, drilling, exploration and production of oil, gas and other minerals shall be issued in lieu of any other permits required under this act; provided, however, that the state oil and gas board shall insure that all activities so permitted within the affected coastal area are consistent with the guidelines and procedures provided for under this act."

Cross References — Prohibition against pollution of waters, streams and air, see §§ 49-17-1 et seq.

JUDICIAL DECISIONS

1. In general.

Requiring grant of public easement across beachfront section of private property, as condition of granting permit to build house on property, effects taking of property without just compensation in violation of Fifth Amendment. Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987).

§ 49-27-11. Application; contents.

(1) A complete application shall include the following:

(a) The name and address of the applicant;

(b) The names and addresses of the present owners of record of adjacent land, as determined by current tax assessment rolls and of known claimants of riparian or water rights in or immediately adjacent to the coastal wetland, or a certification that after diligent search and inquiry the names and addresses could not be found;

(c) A detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale showing by section, township and range, or by latitudinal and longitudinal coordinator, the location and area of the coastal wetlands to be affected, indicating the location and area of existing and proposed fill, excavation or other regulated activities; showing the location, width, depth and length of any proposed channel and dredge spoil disposal site; showing all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and related appurtenances or facilities, including those on adjacent uplands; describing the type of equipment to be used and the means of equipment access to the activity site;

(d) An estimate of the cost of the activity;

(e) The primary and secondary purposes of the project, including contemplated future projects;

(f) A description of any public benefit to be derived from the proposed project dependent upon the proposed activity;

(g) A complete description of measures to be taken to reduce detrimental off-site effects to the coastal wetlands during and after the proposed activity;

(h) The completion date of the proposed activity and of the project dependent upon the activity;

(i) An appropriate written report or statement of the environmental impact of the proposed regulated activity and of the final project dependent on it upon the affected coastal wetlands and the life dependent upon them, provided that an environmental impact statement treating the same activity in the same area and supplied to another federal or state agency for considering a permit shall satisfy this requirement if submitted by the applicant; and

(j) A certification that a permit from the Mississippi Commission on Environmental Quality has been applied for or that such permit is not required; that a permit from the United States Corps of Engineers has been applied for or that such permit is not required; that permits or other certificates of compliance with applicable municipal or county building codes and zoning ordinances have been applied for or are not required.

(2) If the applicant alters or amends the information provided in compliance with paragraph (c) of subsection (1) of this section, the review periods provided for in Sections 49-27-15 and 49-27-37 shall begin on the date that the new information is provided to the department. The date of receipt for a completed application begins on the date of the last amendment made in accordance to paragraph (c) of subsection (1) of this section.

(3) Any person filing an application to dredge an existing channel for navigational purposes shall complete an application for such activities in accordance with application procedures required in this section.

SOURCES: Laws, 1973, ch. 385, § 5(b)(c)(d); Laws, 1974, ch. 401, § 3; Laws, 1989, ch. 331, § 1; Laws, 2009, ch. 354, § 1; Laws, 2011, ch. 394, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added (2).

Cross References — Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

§ 49-27-13. Application; copy may be mailed to parties.

The commission may cause a copy of any application to be mailed immediately to the following parties:

(1) The chief administrative officer in the municipality or municipalities where any part of the proposed activity will be located;

(2) The president of the board of supervisors of any county where any part of the proposed activity will be located;

(3) The Executive Director of the Department of Wildlife, Fisheries and Parks;

(4) The county attorney of any county in which any part of the proposed activity will be located or in any county which may be affected by such activity;

(5) The district attorney of any judicial district in which any part of the proposed activity will be located or of any district which may be affected by such activity; and

(6) The Director of the Gulf Regional Planning Commission.

SOURCES: Laws, 1973, ch. 385, § 5(e); Laws, 1994, ch. 578, § 30; Laws, 2005, ch. 359, § 1, eff from and after passage (approved Mar. 15, 2005.)

§ 49-27-15. Application; notice of date for filing objections; hearing and notice of hearing; payment of publication fees and costs of providing notice to public.

(1)(a) The department may schedule a hearing on any application; however, the department shall schedule a hearing on each application if, during the time period in which written objections are required to be filed, (i) a written request for a hearing is submitted by the applicant, or (ii) a hearing is requested or written objections are submitted to the application by a political subdivision, an agency, or five (5) or more persons affected by the application. At such hearing, any person may present oral or written comments on the application. Not later than sixty (60) days from the receipt of a complete application, the commission shall publish notice of the time period in which written objections to any application must be filed.

(b) The hearing must be held within twenty (20) days after the time period in which objections are required to be filed ends, unless a later date for the hearing is agreed to by all parties. Notice of the date on or before which objections must be filed shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper of general circulation in the county in which the affected wetlands are located. The last publication of such notice shall be made not more than seven (7) days prior to such date. The published notice shall describe the site of the proposed activity and shall give a general description of the proposed regulated activity. Further, notice shall be given describing the date, time and place for the hearing by United States mail, postage prepaid, to each of the objectors and to the applicant at the address furnished to the commission by the parties, and by causing a copy of such notice to be published at least one time in one (1) newspaper having a general circulation in the county in which the affected wetlands are located.

(2) An applicant shall pay the publication fees and the costs of providing notice to the public.

SOURCES: Laws, 1973, ch. 385, § 5(f); Laws, 1974, ch. 401, § 4; Laws, 1994, ch. 578, § 31; Laws, 2004, ch. 331, § 1; Laws, 2009, ch. 354, § 2; Laws, 2011, ch. 410, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote (1); and substituted "publication fees and the costs of providing notice to the public" for "estimated costs of public notice and publication fees before the notice is published" at the end of (2).

Cross References — Review period provided for in this section to begin on the date of last amendment, see § 49-27-11.

§ 49-27-17. Application; notice to parties prior to date set for hearing; effect of failure to comply with section.

The following parties shall be notified of a hearing by the commission by mail prior to the date set for the hearing, but a failure to meet this requirement shall not invalidate any permit granted thereafter:

(a) All of those parties who are entitled to receive a copy of such application in accordance with Section 47-27-13 of this chapter; and

(b) All known present owners of record of adjacent land as reflected by current tax assessment rolls and all known claimants to water or riparian rights in or adjacent to the coastal wetlands affected.

SOURCES: Laws, 1973, ch. 385, § 5(g); Laws, 1974, ch. 401, § 5; Laws, 1994, ch. 578, § 32, eff from and after July 1, 1994.

§ 49-27-19. Application; appearance at hearing by person filing objection; applicant's burden of proof and right to hearing.

(a) Any person who files a written objection pursuant to Section 49-27-15 may appear at the public hearing and be heard.

(b) The burden of proof shall be on the applicant, whether a hearing is held or not; provided, however, no application shall be denied without giving the applicant a right to a hearing according to the provisions of this chapter.

SOURCES: Laws, 1973, ch. 385, § 5(h)(i), eff from and after July 1, 1973.

§ 49-27-21. Public inspection of evidence, applications and related documents; record and transcription of oral testimony.

Documentary evidence offered at hearings and all applications and related documents shall be open for public inspection at the office of the commission at reasonable times. Oral testimony shall be recorded and shall not be required to be transcribed except in the event of appeal.

SOURCES: Laws, 1973, ch. 385, § 5(j); Laws, 1974, ch. 401, § 6; Laws, 1994, ch. 578, § 33, eff from and after July 1, 1994.

§ 49-27-23. Commission authorized to grant, issue, reissue, modify, deny, suspend, revoke, limit, or condition permits; expressed public policy to be considered in connection with permits; acquisition of permits; resolution of conflicts.

The commission may grant, issue, reissue, modify, deny, suspend or revoke permits and may prescribe limitations and conditions on permits. When taking such action on any permit, the commission shall consider the effect of the proposed activity with reference to the public policy expressed in Section 49-27-3 of this chapter. A permittee under this chapter must obtain a permit from the Mississippi Commission on Environmental Quality if required by that commission under Sections 49-17-29 through 49-17-43, and nothing in this chapter is intended to waive the requirements and standards of such commission. A Mississippi Commission on Environmental Quality permit granted to an applicant under this chapter shall be proof of the applicant's meeting any water quality standard considered by the commission under this chapter. Any conflict under this chapter between the commission and the Commission on Environmental Quality shall be resolved in favor of the Commission on Environmental Quality. The commission may undertake studies regarding water quality and submit the results of such studies to the Commission on Environmental Quality.

SOURCES: Laws, 1973, ch. 385, § 6(a); Laws, 1974, ch. 401, § 7; Laws, 1994, ch. 578, § 34; Laws, 2005, ch. 338, § 1, eff from and after passage (approved Mar. 14, 2005.)

Cross References — Prohibitions against pollution of waters, streams and air, see § 49-17-1 et seq.

§ 49-27-25. Repealed.

Repealed by Laws of 1989, ch. 331, § 2, eff from and after July 1, 1989. [En Laws, 1973, ch. 385, § 6(b)]

Editor's Note — Former § 49-27-25 provided that permits for old channels were to be issued without bond under certain circumstances.

§ 49-27-27. Permits to dredge new channels; considerations and restrictions.

In considering permits to dredge new channels by applicants under subsection (c) of Section 49-27-11, the commission shall take into consideration in addition to Section 47-27-23 the benefit of such channel to the public at large, or to surrounding landowners, and the extent of use projected for the channel, as well as the ecological, economic, commercial, recreational and aesthetic value of the wetlands affected. The commission shall, where practical, require applicants to use existing channels, so as to reduce the coastal wetlands affected.

SOURCES: Laws, 1973, ch. 385, § 6(c); Laws, 1994, ch. 578, § 35, eff from and after July 1, 1994.

§ 49-27-29. Conditions or limitations may be imposed on grant or modification of permit.

In granting or modifying any permit, the commission may impose conditions or limitations on the proposed activity designed to carry out the public policy set forth in this chapter. Upon the expiration of a coastal wetlands permit issued under this chapter, the commission may extend the permit in time.

SOURCES: Laws, 1973, ch. 385, § 6(d); Laws, 1994, ch. 578, § 36; Laws, 2005, ch. 338, § 2, eff from and after passage (approved Mar. 14, 2005.)

§ 49-27-31. Performance bond may be required.

The commission may require a performance bond in an amount to be set by the commission with surety and satisfactory conditions securing to the state compliance with the conditions and limitations set forth in any permit.

SOURCES: Laws, 1973, ch. 385, § 6(e); Laws, 1994, ch. 578, § 37; Laws, 2001, ch. 415, § 1, eff from and after July 1, 2001.

§ 49-27-33. Suspension or revocation of permit after notice and hearing.

The commission, after reasonable notice in writing to the holder of a permit and after a hearing in the manner as provided in Sections 49-27-15 through 49-27-21 of this chapter, shall suspend or revoke a permit if it finds that the applicant has not substantially complied with one or more of the conditions or limitations set forth in the permit or has exceeded the scope of the activities as set forth in the application.

SOURCES: Laws, 1973, ch. 385, § 6(f); Laws, 1974, ch. 401, § 8; Laws, 1994, ch. 578, § 38, eff from and after July 1, 1994.

§ 49-27-35. Findings, reasons and descriptions to be recorded by council.

The commission shall state, upon its record, its findings and reasons for all actions taken pursuant to Sections 49-27-23 through 49-27-37. When a permit is granted or modified, the commission shall describe the public interest to be served by granting or modifying the permit. When a permit or modification is denied, the commission shall describe the public interest which would be adversely affected by granting or modifying the permit.

SOURCES: Laws, 1973, ch. 385, § 6(g); Laws, 1994, ch. 578, § 39; Laws, 2005, ch. 338, § 3, eff from and after passage (approved Mar. 14, 2005.)

JUDICIAL DECISIONS

1. Procedures on appeal.

In the context of decisions pursuant to the Mississippi Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 et seq., if the Mississippi Department of Marine Resources and its Commission do not provide enough information for the chancellor to review a decision, then the chancellor must request what is missing and the Commission must provide it. Thus, where the property owner's application for a permit to fill a wetlands area was denied, and where the chancellor found that the record was "devoid of any findings of fact" as to certain issues, the sole remedy at that point was to remand the case back to the Commission. Miss. Dep't of Marine Res. v. Brown, 905 So. 2d 649 (Miss. Ct. App. 2004).

§ 49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties; time; extensions.

(1) The commission shall send a copy of any order in issuance, denial, revocation or suspension of a permit to the parties stated in Section 49-27-17, and such orders must be sent within ninety (90) days from the receipt of a complete application, or within ninety (90) days from an amendment to the application as provided by Section 49-27-11(2), in the case of granting or denying or thirty (30) days from the date of the hearing in the case of suspension or revocation, unless an extension is requested as provided in subsection (2) and approved by the commission.

(2) An applicant may request, in writing, additional thirty-day extensions for the processing of an application.

SOURCES: Laws, 1973, ch. 385, § 6(h); Laws, 1994, ch. 578, § 40; Laws, 2004, ch. 314, § 1; Laws, 2006, ch. 305, § 1; Laws, 2009, ch. 354, § 3; Laws, 2011, ch. 394, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted "or within ninety (90) days from an amendment to the application as provided by Section 49-27-11(2)" in (2).

§ 49-27-39. Appeal to chancery court; when council's order to be confirmed.

(a) An appeal may be taken by the applicant, or any person or corporation, municipal corporation, county or interested community group who has been aggrieved by such order, from the denial, suspension or revocation of a permit or the issuance of a permit or conditional permit and who has filed written protest or objection as specified in Sections 49-27-9 through 49-27-21, within thirty (30) days after the mailing to the parties of the order of issuance, denial, suspension or revocation of any such permit, to the chancery court of any county having jurisdiction over the property which may be affected by any such proposed activity to be authorized by such permit.

(b) If the court finds that the order appealed from is supported by substantial evidence, consistent with the public policy set forth in this chapter, is not arbitrary or capricious and does not violate constitutional rights, it shall affirm the council's order.

SOURCES: Laws, 1973, ch. 385, § 7(a)(b), eff from and after July 1, 1973.

Cross References — Terms, jurisdiction and powers of chancery court generally, see § 9-5-1 et seq.

Practice and procedure in chancery court generally, see § 11-5-1 et seq.

JUDICIAL DECISIONS

1. Procedures on appeal.
2. Substantial evidence review.

1. Procedures on appeal.

In the context of decisions pursuant to the Mississippi Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 et seq., if the Mississippi Department of Marine Resources and its Commission do not provide enough information for the chancellor to review a decision, then the chancellor must request what is missing and the Commission must provide it. Thus, where the property owner's application for a permit to fill a wetlands area was denied, and where the chancellor found that the record was "devoid of any findings of fact" as to certain issues, the sole remedy at that point was to remand the case back to the Commission. Miss. Dep't of Marine Res. v. Brown, 905 So. 2d 649 (Miss. Ct. App. 2004).

2. Substantial evidence review.

In contesting a wetlands permit defendant, Mississippi Department of Marine Resources failed to show an adverse impact due to the landowner's construction of a pier addition, given that a future boat ramp for larger vessels was planned for the same area, thus, the chancellor's decision reversing the decision of the the Commission on Marine Resources denying plaintiff landowners' request for a wetlands permit to build a pier addition and fill part of a marsh for a parking lot was supported by substantial evidence under Miss. Code Ann. § 49-27-39(b). Miss. Dep't of Marine Res. v. Brown, — So. 2d —, 2003 Miss. App. LEXIS 1185 (Miss. Ct. App. Dec. 16, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 649, 2004 Miss. App. LEXIS 491 (Miss. Ct. App. 2004).

§ 49-27-41. Appeal to chancery court; complaint; return date; cost bond; record; appeal with supersedeas.

Such appeal shall be brought by a complaint in writing, stating fully the reasons therefor, signed by an authorized party, and shall be served at least twelve (12) days before the return date upon the commission and upon all parties having an interest adverse to the appellant as designated under subsection (a) of Section 49-27-39. Such appeals shall be brought to the next return day of the court after the filing of such appeal or may be returned to a day set by fiat of the court. A cost bond must be posted with sufficient sureties payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed in the order appealed from and to be filed with and approved by the executive director of the commission, who shall forthwith certify the same, together with a certified copy of the transcription record of the proceedings in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition, and upon good cause shown may grant the appeal with supersedeas in which case the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor.

SOURCES: Laws, 1973, ch. 385, § 7(c); Laws, 1994, ch. 578, § 41, eff from and after July 1, 1994.

Cross References — Terms, jurisdiction and powers of chancery court generally, see §§ 9-5-1 et seq.

Practice and procedure in chancery court generally, see §§ 11-5-1 et seq.

§ 49-27-43. Appeal to chancery court; service upon commission; certification of record.

Upon the filing of an appeal, the clerk of the chancery court shall serve notice thereof upon the commission, whereupon the commission shall within sixty (60) days, or within such additional time as the court may for cause allow, from the service of such notice certify to the chancery court the record in the case, which record shall include a transcript of all testimony, all objections, all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the commission may stipulate that only a specified portion of the record shall be certified to the court as the record on appeal.

SOURCES: Laws, 1973, ch. 385, § 7(d); Laws, 1994, ch. 578, § 42, eff from and after July 1, 1994.

Cross References — Terms, jurisdiction and powers of chancery court generally, see §§ 9-5-1 et seq.

Practice and procedure in chancery court generally, see §§ 11-5-1 et seq.

Transcription of recorded testimony before the council for purposes of appeal, see § 49-27-21.

§ 49-27-45. Appeal to chancery court; when case to be referred back to commission.

If, upon hearing such appeal, it appears to the court that any testimony has been improperly excluded by the commission or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, it shall refer the case back to the commission to take such evidence as it may direct and report the same to the court with the commission's findings of fact and conclusions of law.

SOURCES: Laws, 1973, ch. 385, § 7(e); Laws, 1994, ch. 578, § 43, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. Higher public interest.
2. Insufficiency of findings.
3. Remand required.

1. Higher public interest.

In contesting a wetlands permit defendant Mississippi Department of Marine Resources failed to show an adverse impact due to the landowner's construction of a pier addition, given that a future boat ramp for larger vessels was planned for the same area; thus, the chancellor's decision reversing the decision of the Commission on Marine Resources denying plaintiff landowners' request for a wetlands permit to build a pier addition and fill part of a marsh for a parking lot was supported by substantial evidence; further, the findings and conclusions required by Miss. Code Ann. § 49-27-45 failed to consider what was very evident in the record, namely, that there was a higher public interest, as the public policy was stated in Miss. Code Ann. § 49-27-3, that would bring the property in compliance with the public purposes of the public trust in which coastal wetlands were held. Miss. Dep't of Marine Res. v. Brown, — So. 2d —, 2003 Miss. App. LEXIS 1185 (Miss. Ct. App. Dec. 16, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 649, 2004 Miss. App. LEXIS 491 (Miss. Ct. App. 2004).

2. Insufficiency of findings.

In contesting a wetlands permit defendant, Mississippi Department of Marine Resources failed to show an adverse impact due to the landowner's construction of a pier addition, given that a future boat ramp for larger vessels was planned for the same area, thus, the chancellor's decision reversing the decision of the Commission on Marine Resources denying plaintiff landowners' request for a wetlands permit to build a pier addition and fill part of a marsh for a parking lot was supported by substantial evidence; further, the findings and conclusions required by Miss. Code Ann. § 49-27-45 failed to consider what was very evident in the record, and that was, there was a higher public interest which would bring the property in compliance with the public purposes of the public trust in which coastal wetlands were held. Miss. Dep't of Marine Res. v. Brown, — So. 2d —, 2003 Miss. App. LEXIS 1185 (Miss. Ct. App. Dec. 16, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 649, 2004 Miss. App. LEXIS 491 (Miss. Ct. App. 2004).

3. Remand required.

In the context of decisions pursuant to the Mississippi Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 et seq., if the Mississippi Department of Marine Resources and its Commission do not provide enough information for the chancellor to review a decision, then the chancellor must request what is missing and the Commission must provide it. Thus, where the property owner's application for a permit to fill a wetlands area was denied, and where the chancellor found that the record was "devoid of any findings of fact" as to certain issues, the sole remedy at that point was to remand the case back to the Commission. Miss. Dep't of Marine Res. v. Brown, 905 So. 2d 649 (Miss. Ct. App. 2004).

§ 49-27-47. Appeal to chancery court; precedence; powers of chancellor.

Such appeal shall have precedence in the order of trial, and the chancellor may order the granting, denial, revocation, suspension or limitation of any permit or may remand to the council for such order.

SOURCES: Laws, 1973, ch. 385, § 7(f), eff from and after July 1, 1973.

Cross References — Terms, jurisdiction and powers of chancery court generally, see §§ 9-5-1 et seq.

Practice and procedure in chancery court generally, see §§ 11-5-1 et seq.

JUDICIAL DECISIONS

1. Procedures on appeal.

In the context of decisions pursuant to the Mississippi Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 et seq., if the Mississippi Department of Marine Resources and its Commission do not provide enough information for the chancellor to review a decision, then the chancellor must request what is missing and the Commission must provide it. Thus, where the property owner's application for a permit to fill a wetlands area was denied, and where the chancellor found that the record was "devoid of any findings of fact" as to certain issues, the sole remedy at that point was to remand the case back to the Commission. Miss. Dep't of Marine Res. v. Brown, 905 So. 2d 649 (Miss. Ct. App. 2004).

§ 49-27-49. Appeal to Supreme Court.

Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing from the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas without additional bond if, in his judgment, material damage is not likely to result thereby, but otherwise he shall require such supersedeas bond as he deems proper which shall be liable to the state or applicant for such damage.

SOURCES: Laws, 1973, ch. 385, § 7(g), eff from and after July 1, 1973.

Cross References — Appeals generally, see §§ 11-51-3 et seq.

§ 49-27-51. After-the-fact authorization for work upon proper application; civil and criminal actions; who may initiate.

(1)(a) If a person in violation of this chapter submit s a proper application for any unauthorized work and the commission determines that the work has been conducted in accordance with the public policy as set forth in Section 49-27-3, the commission shall issue after-the-fact authorization for the work.

(b) For conducting the work without first obtaining a current and valid permit and other violations of this chapter, the commission may order and levy a penalty of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) per day for each day the violation has existed for residential type regulated activity and a penalty of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00) per day for each day the violation has existed for commercial and industrial type regulated activity.

(2) If the person continues the violation, the Attorney General of the State of Mississippi at the request of the commission, a district attorney having jurisdiction, or a county attorney having jurisdiction may initiate the civil or criminal actions, or both civil and criminal actions, as described in this chapter against the person.

(3) The Attorney General, commission, district attorney or county attorney may initiate action to enjoin any person in violation of this chapter.

SOURCES: Laws, 1973, ch. 385, § 8(a)(b); Laws, 1974, ch. 401, § 9; Laws, 1982, ch. 313; Laws, 1994, ch. 578, § 44; Laws, 2009, ch. 500, § 1, eff from and after July 1, 2009.

Cross References — Office, powers and duties of Attorney General, see §§ 7-5-1 et seq.

Punitive damages, generally, see § 11-1-65.

RESEARCH REFERENCES

ALR. Standard of proof as to conduct underlying punitive damage awards-modern status. 58 A.L.R.4th 878.

§ 49-27-53. Jurisdiction and venue for judicial actions.

Jurisdiction and venue for judicial actions brought pursuant to this chapter shall lie in any county or counties in which the alleged violation occurs or in which property affected by such violation is located.

SOURCES: Laws, 1973, ch. 385, § 8(c), eff from and after July 1, 1973.

§ 49-27-55. Civil liability of violators; restoration; punitive damages; mandatory injunction; jurisdiction of circuit or county court; remedies preserved.

(a) Any person who performs or causes to be performed any activity regulated by this chapter for which a permit has not been obtained, violates any provision of this chapter, regulation promulgated pursuant to this chapter or any condition of a permit, shall be liable to the State of Mississippi for the restoration of all affected coastal wetlands to their condition prior to such violation, insofar as such restoration is possible, and for any and all damages to the wetlands. The appropriate chancery court by writ of mandatory injunction shall allow a reasonable time for completion of the restoration and may, in its discretion, order as punitive damages a sum not to exceed Five Hundred Dollars ($500.00) per day for each day such violation has existed. The chancery court may further order as punitive damages a sum not to exceed Five Hundred Dollars ($500.00) per day for each day that the violation exists beyond the date set by the court in its injunction for the restoration of the wetland. If injunctive relief is not sought, the appropriate circuit or county court shall have jurisdiction over any action for damages and/or punitive damages as set forth in this paragraph.

(b) Nothing in this chapter shall preclude other statutory or common law remedies by public or private parties against violators or nonviolators of this chapter.

SOURCES: Laws, 1973, ch. 385, § 8(d)(e); Laws, 1989, ch. 420, § 1, eff from and after July 1, 1989.

Cross References — Punitive damages, generally, see § 11-1-65.
Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

§ 49-27-57. Fines and penalties.

(a) In addition to civil liability under this chapter, a violation of this chapter is a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) and not more than One Thousand Dollars ($1,000.00) or by imprisonment of not more than thirty (30) days, or both.

(b) In the case of continuing violations, each day shall constitute a separate charge; however, separate violations under this chapter need not be severed for trial when an identity of parties and location exists.

(c) It shall be a misdemeanor to materially harm or disturb scientific devices and recording instruments left in coastal wetlands by authorized agencies of the state or federal government, and a violation of this subsection shall be punishable by a fine of not more than Five Hundred Dollars ($500.00) or imprisonment of not more than thirty (30) days or both.

SOURCES: Laws, 1973, ch. 385, § 9, eff from and after July 1, 1973.

Cross References — Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 49-27-59. Rules and regulations.

The commission shall adopt, promulgate and publish rules and regulations for the implementation of this chapter. Before becoming effective, such rules and regulations, and any changes, must be published once a week for at least three (3) consecutive weeks in a newspaper having general circulation throughout the State of Mississippi. Such rules and regulations shall provide procedure whereby an individual or organization may receive at their own expense copies of the applications provided for in Section 49-27-13 of this chapter.

SOURCES: Laws, 1973, ch. 385, § 10; Laws, 1994, ch. 578, § 45, eff from and after July 1, 1994.

§ 49-27-61. Charges for materials removed under permit; alternative for dredge material disposal.

(1)(a) The commission shall charge Fifty Cents (50¢) per cubic yard for any sand or gravel removed from wetlands and Twenty-five Cents (25¢) per cubic yard for any other materials removed from coastal wetlands by a permittee or his agent under the terms of any permit issued.

(b) There shall be no charge levied by the commission for the removal of one hundred (100) cubic yards or less of any material removed from wetlands by a permittee or his agent under the terms of any permit issued.

(c) The commission may waive these charges on any project of a governmental agency or any project wherein expenditures are made as the result of a governmental grant or governmental bond proceeds.

(d) Any party participating in the beneficial use of dredge materials programs under subsection (2) shall be exempt from these charges.

(2) The department shall require any party permitted to conduct dredging activities of over two thousand five hundred (2,500) cubic yards to participate in the department programs involving beneficial use of dredge materials, provided the material is suitable and a beneficial use site is available. If approved by the executive director, or his designee, a party may deposit acceptable dredge materials in a designated location for a fee not to exceed fifty percent (50%) of the fair market cost to transport and dispose of the material in an approved upland site. The department shall consider in-kind services for offsetting depositional charges.

SOURCES: Laws, 1973, ch. 385, § 11; Laws, 1988, ch. 408, § 3; Laws, 1994, ch. 578, § 46; Laws, 2005, ch. 371, § 2; Laws, 2010, ch. 412, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "The commission may waive" for "The commission shall waive" in (1)(c); and rewrote the first sentence in (2).

§ 49-27-63. Inspections.

The commission shall, from time to time, inspect the coastal wetlands to determine whether violations have been or are being committed. The commission or any authorized employee of the Department of Marine Resources may enter at reasonable times upon any private or public property in the performance of duty to enforce the Coastal Wetlands Protection Act.

SOURCES: Laws, 1973, ch. 385, § 12; Laws, 1994, ch. 578, § 47; Laws, 2009, ch. 320, § 1, eff from and after July 1, 2009.

Cross References — Prohibitions against pollution of waters, streams and air, see §§ 49-17-1 et seq.

Coastal Wetlands Protection Act, see §§ 49-27-1 et seq.

§ 49-27-65. Evaluation of coastal wetlands; charts; education of public; overall use plan.

(a) To implement the policy set forth in the chapter and to assist in the protection of coastal wetlands, the commission acting with the cooperation and assistance of the Gulf Regional Planning Commission and the Gulf Coast Research Laboratory shall evaluate the coastal wetlands and prepare charts at an appropriate scale showing the distribution of coastal wetlands as defined in this chapter. These charts will be provided to the offices of the chancery clerk of affected counties and to the Gulf Regional Planning Commission. The charts will be updated and reissued periodically as needed to provide a current inventory of coastal wetlands.

(b) The commission shall promote the education of the public about scientific and economic knowledge concerning coastal wetlands.

(c) In recognition of the national policy expressed in the Coastal Zone Management Act of 1972, Public Law 92-583, the commission is directed to include an overall plan for use of coastal and private wetlands in the Mississippi Coastal Zone Management Plan being prepared by the commission. The commission is further directed to identify and include in such plan specific coastal and private wetlands which should be set aside as estuarine sanctuaries.

SOURCES: Laws, 1973, ch. 385, § 13; Laws, 1994, ch. 578, § 48, eff from and after July 1, 1994.

Federal Aspects — Public Law 92-583, Coastal Zone Management Act of 1972, see 16 USCS §§ 1451 et seq.

§ 49-27-67. Exclusion from assessment for ad valorem taxes.

Any coastal wetlands now assessed for ad valorem taxes against the abutting landowner shall be excluded from the assessment of the said landowner's property upon proper application being made as otherwise provided by law.

SOURCES: Laws, 1973, ch. 385, § 14, eff from and after July 1, 1973.

§ 49-27-69. Disposition of fees and other sums.

All fees and other sums received by the commission pursuant to this chapter shall be deposited to the credit of the "Seafood Fund".

SOURCES: Laws, 1973, ch. 385, § 15; Laws, 1994, ch. 578, § 49, eff from and after July 1, 1994.

Cross References — Seafood Fund, see § 49-15-17.

§ 49-27-71. Removal of derelict vessels from manmade canal with navigable connection to coastal wetlands; immediate removal of sunken or submerged vessels creating hazard to navigation.

(1)(a) The department may remove from the coastal wetlands, as defined in Section 49-27-5(a), Mississippi Code of 1972, or from any private or manmade canal with a navigable connection to coastal wetlands, any vessel which is derelict, or has been determined by the department to be a public safety or environmental hazard, having been relinquished, deserted or left by the owner with the intention of abandoning the vessel. Any vessel submerged in or on the coastal wetlands or submerged in any private or manmade canal, with a navigable connection to coastal wetlands, in excess of thirty (30) days is declared abandoned and a derelict vessel. For the purposes of this section, no vessel submerged more than one hundred (100) years will be considered derelict.

(b) Any owner or operator of a derelict vessel shall be liable to the State of Mississippi for the restoration of all affected coastal wetlands and all costs associated with the removal of the vessel.

(2)(a) If the last known owner or operator of a derelict vessel is ascertainable, the owner or operator shall be notified by certified mail to remove the derelict vessel and restore the affected coastal wetlands within thirty (30) days of the date of the notice. Failure to remove the vessel may result in the imposition of the damages provided in subsection (3).

(b) When the owner or operator of the derelict vessel is unknown or cannot be located after diligent search and inquiry, notice shall be given by publishing in a newspaper having general circulation in the county where the derelict vessel is located the intent to remove and dispose of the derelict vessel. The notice shall be published once a week for three (3) consecutive weeks. The derelict vessel may be removed ten (10) days after the last date of publication.

(c) The municipality or county where the vessel is located may remove the derelict vessel or request the department to contract for the removal of the derelict vessel. The cost of the removal of the derelict vessel shall be paid by the municipality or the county where the vessel is located. If the county or municipality cannot pay the cost of removal, the department may pay the cost of removal, if funds are available.

(d) Any derelict vessel salvaged may be destroyed or otherwise disposed of without additional notice to the owner or operator and the value thereof, if any, applied as an offset to the cost of the removal of the derelict vessel and restoration of the affected coastal wetlands.

(e) If an owner or operator is subsequently identified, the owner or operator shall be liable for double the cost of the removal of the derelict vessel and the restoration of the affected coastal wetlands, attorneys' fees and all costs of court. Upon recovery of these damages, the county, municipality or department, as the case may be, shall be reimbursed the costs of the removal of the derelict vessel and restoration of the coastal wetlands.

(f) In addition to providing notice by publication or to the known owner or operator, notice shall be sent by mail to the Mississippi Department of Archives and History for a determination as to whether the vessel to be removed is of archaeological, historical or architectural significance under the state antiquities law. The Department of Archives and History shall respond within thirty (30) days to the notice and advise whether or not the vessel should be preserved.

(3) The chancery court of the county where the vessel is located shall have jurisdiction and by writ of mandatory injunction, order the removal of the vessel by the owner or operator. The chancery court shall allow a reasonable time for completion of the restoration of the coastal wetlands and removal of the vessel. The chancery court may, in its discretion, order as damages a sum not to exceed Five Hundred Dollars ($500.00) per day for each day such violation has existed. The chancery court may further order as damages a sum not to exceed Five Hundred Dollars ($500.00) per day for each day that the violation exists beyond the date set by the court in its injunction for the removal of the vessel and the restoration of the coastal wetlands. Additionally, the owner or operator shall be liable for reasonable attorneys' fees and all costs of court.

(4) Any reimbursed cost of removal and any fines and damages collected in excess of the cost of the removal of the vessel and the restoration of the affected coastal wetlands shall be deposited in a special fund in the State Treasury to be known as the "Derelict Vessel Fund." The fund shall be administered by the department. Any funds deposited in the fund shall be used to cover the administrative costs and removal costs incurred by the department for the removal of vessels. Any remaining funds shall be used as a match for municipal and county funds to cover the costs of removing additional vessels.

(5) Any sunken or submerged vessel in or on the coastal wetlands within any designated navigation channel or within one hundred (100) yards of the boundaries of any state, county or municipal port may be declared a hazard to navigation and subject to immediate removal and disposal by the department. Any sunken or submerged vessel in or on the coastal wetlands that is leaking any hazardous substances, chemicals or fuels may be declared an environmental hazard and subject to immediate removal and disposal by the department. The owners of a vessel removed in accordance with this subsection shall be liable for the costs associated with the salvage and disposal of the vessel and any damages to the flora and fauna within the coastal wetlands.

(6) The department is authorized to enter into contracts with individuals, firms and corporations for the removal of vessels. The salvage value, if any, of the vessel may be used to offset the cost of the removal of the vessel and the restoration of the coastal wetlands. The department may enter into noncompetitive contracts or agreements with any state or federal entity for the removal of vessels.

(7) The commission shall adopt rules and regulations necessary and appropriate to carry out this section. The commission may also enter into interstate or intrastate efforts toward this end, and may seek and utilize aid from all federal, state and local sources in this endeavor.

(8) The State of Mississippi, the commission, the department and their employees and representatives shall not be liable for any damage resulting from the removal, sale or disposal of any vessel declared a derelict or hazardous vessel pursuant to this section.

SOURCES: Laws, 2000, ch. 603, § 1; Laws, 2002, ch. 592, § 1, eff from and after passage (approved Apr. 11, 2002.)

Editor's Note — Laws of 2000, ch. 603, § 2, provides as follows:

"SECTION 2. The provisions of Section 1 of this act shall be codified in Chapter 27, Title 49, Mississippi Code of 1972."

Cross References — Department of Archives and History generally, see §§ 39-5-1 et seq.

CHAPTER 28

Shoreline and Beach Preservation Districts

Sec.
49-28-1. Eligibility for status as shoreline and beach preservation district; purpose of district.
49-28-3. Petition for incorporation.
49-28-5. Hearing; adoption of resolution of findings and intention to create district.
49-28-7. Publication of notice of intent to create district; referendum on creation of district.
49-28-9. Adoption of resolution creating district.
49-28-11. Payment of costs for creation of district.
49-28-13. Appeals.
49-28-15. District to be public corporation in perpetuity.
49-28-17. Appointment of board of commissioners; membership; terms of office; compensation.
49-28-19. Powers and duties of district.
49-28-21. Power of eminent domain.
49-28-23. District authorized to issue negotiable special improvement bonds for projects.
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49-28-27. Authorization for ad valorem tax on real property.
49-28-29. Special assessments.
49-28-31. Special assessments; bonds secured by pledge thereof.
49-28-33. Special assessments; payment.
49-28-35. Distribution of costs and expenses of special improvements among the properties affected.
49-28-37. Written protest objecting to assessments.
49-28-39. Financial assistance or cooperation from state or federal government.
49-28-41. Chapter as full and complete authority.
49-28-43. Publication of financial statement.
49-28-45. Validation of bonds.
49-28-47. Chapter to be liberally construed.
49-28-49. Severability.

§ 49-28-1. Eligibility for status as shoreline and beach preservation district; purpose of district.

Except as otherwise provided in this section, any contiguous area situated within any county of the state located along the Mississippi Gulf Coast, and not being situated within the corporate boundaries of any existing municipality, and experiencing shoreline and beach erosion and other related problems, may become incorporated as a shoreline and beach preservation district in the manner set forth in the following sections. The purpose of the district shall be to provide for the planning, design, construction, operation, maintenance and improvement of shoreline and beach improvement projects, including habitat restoration projects. This chapter shall not apply to Harrison County or Hancock County, Mississippi.

SOURCES: Laws, 1999, ch. 566, § 1, eff from and after passage (approved Apr. 21, 1999.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the last sentence. The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 49-28-3. Petition for incorporation.

A petition for the incorporation of a shoreline and beach preservation district may be submitted to the board of supervisors of a county, referred to in this chapter as "board of supervisors," signed by not less than twenty-five (25) owners of real property residing within the boundaries of the proposed district. The petition shall include: (a) a statement of the necessity for the creation of the proposed district; (b) the proposed corporate name for the district; (c) the proposed boundaries of the district, which shall not include any property used for industrial purposes, unless the owner of that property submits a written request to the board of supervisors to be included in the district; (d) an estimate of the cost of special improvement projects to be conducted and maintained by the district; however the estimate shall not serve as a limitation upon the financing of any project; (e) a statement of whether or not the board of supervisors of the county shall exercise the authority to levy the tax outlined in Section 49-28-27; and (f) a statement of whether or not the board of supervisors of the county shall exercise the authority to make assessments as outlined in Section 49-28-29. The petition shall be signed in person by the petitioners, with their respective residence addresses. The petition shall be accompanied by a sworn statement of the person or persons circulating the petition stating that the person or persons witnessed the signature of each petitioner, that each signature is the signature of the person it purports to be, and that, to the best of the person's or persons' knowledge, each petitioner was at the time of signing an owner of real property within and a resident of the proposed district.

SOURCES: Laws, 1999, ch. 566, § 2, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-5. Hearing; adoption of resolution of findings and intention to create district.

(1) Upon the filing of a petition, the board of supervisors shall fix a time and place for a public hearing upon the question of the public convenience and necessity of the incorporation of the proposed district. The date fixed for the hearing shall be not more than thirty (30) days after the filing of the petition. The time, date and location of the hearing, the proposed boundaries of the district, and the purpose of the hearing shall be set forth in a notice to be signed by the clerk of the board of supervisors. The notice shall be published in a newspaper having general circulation within the proposed district once a

week for at least three (3) consecutive weeks before the date of the hearing. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the hearing and the last publication shall be made not more than seven (7) days before the date of the hearing.

(2) If, at the public hearing, the board of supervisors finds (a) that the public convenience and necessity require the creation of the district and (b) that the creation of the district is economically sound and desirable, then the board of supervisors shall adopt a resolution making those findings and declaring its intention to create the district on a date to be specified in the resolution. The resolution shall also designate the name of the proposed district, define its territorial limits which shall be fixed by the board of supervisors pursuant to the hearing, and state whether or not the board of supervisors shall levy the ad valorem tax authorized in Section 49-28-27 and whether or not the board of supervisors proposes to make special assessments against benefited properties as outlined in Section 49-28-29.

SOURCES: Laws, 1999, ch. 566, § 3, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-7. Publication of notice of intent to create district; referendum on creation of district.

(1) A certified copy of the adopted resolution shall be published in a newspaper having a general circulation within the proposed district once a week for at least three (3) consecutive weeks before the date specified in the resolution as the date upon which the board of supervisors intends to create the district. The first publication of the notice shall be made not less than twenty-one (21) days before the date specified, and the last publication shall be made not more than seven (7) days before the date.

(2) If twenty percent (20%) or one hundred fifty (150), whichever is less, of the qualified electors of the county residing within the proposed district file a written petition with the board of supervisors on or before the date specified in the resolution under subsection (1) of this section protesting the creation of the district, the board of supervisors shall call an election on the question of the creation of the district. The election shall be held and conducted by the election commissioners of the county, as far as is practicable in accordance with the general laws governing elections. The election commissioners shall determine which of the qualified electors of the county reside within the proposed district, and only those qualified electors as reside within the proposed district shall be entitled to vote in the election. Notice of the election setting forth the time, place or places, and purpose of the election shall be published by the clerk of the board of supervisors. The notice shall be published for the time and in the manner provided in Section 49-28-5 for the publication of the resolution of intent. The ballot to be prepared for and used at the election shall be in substantially the following form:

"FOR CREATION OF ________ DISTRICT: ( )
AGAINST CREATION OF ________ DISTRICT: ( )."

Voters shall vote by placing a cross mark (x) or check mark (√) opposite their choice.

SOURCES: Laws, 1999, ch. 566, § 4, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-9. Adoption of resolution creating district.

If no petition requiring an election is filed or if three-fifths (3/5) of those voting in the election provided in Section 49-28-7 vote in favor of the creation of the district, the board of supervisors shall adopt a resolution creating the district as described in the resolution of intent.

SOURCES: Laws, 1999, ch. 566, § 5, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-11. Payment of costs for creation of district.

If the creation of the district is initiated by petition, the board of supervisors may bear the costs of meeting the requirements of this chapter or may require the parties filing the petition to bear the costs. The board of supervisors may require the execution of a cost bond by the parties filing the petition. The bond shall be in an amount and with good sureties to guarantee the payment of any costs.

SOURCES: Laws, 1999, ch. 566, § 6, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-13. Appeals.

Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudication of the board of supervisors may appeal to the circuit court of the county in the manner provided by law for appeals from orders of the board of supervisors. However, if no appeal is taken within fifteen (15) days after the date of the adoption of the resolution creating the district, the creation of the district shall be final and shall not be subject to attack in any court after that time.

SOURCES: Laws, 1999, ch. 566, § 7, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-15. District to be public corporation in perpetuity.

Beginning on the date of the adoption of the resolution creating a district, the district shall be a public corporation in perpetuity under its corporate name and shall, in that name, be a body politic and corporate with power of perpetual succession.

SOURCES: Laws, 1999, ch. 566, § 8, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-17. Appointment of board of commissioners; membership; terms of office; compensation.

(1) The powers of a district shall be vested in and exercised by a board of commissioners consisting of five (5) members to be appointed by the board of supervisors from a list of at least fifteen (15) candidates submitted by the supervisor in whose district the shoreline and beach preservation district is located. If the shoreline and beach preservation district is located in more than one (1) supervisors district, the supervisors in whose districts the shoreline and beach preservation district is located shall submit a list of at least fifteen (15) candidates mutually agreed upon by such supervisors. The members of the board of commissioners shall be landowners or residents of the district and shall be at least twenty-five (25) years of age and of sound and disposing mind and judgement. Upon their initial appointment, one (1) of the commissioners shall be appointed for a term of one (1) year; one (1) for a term of two (2) years; one (1) for a term of three (3) years; one (1) for a term of four (4) years; and one (1) for a term of five (5) years. After expiration of the initial appointments, each commissioner shall be appointed and shall hold office for a term of five (5) years. Any vacancy occurring on the board of commissioners shall be filled by the board of supervisors at any regular meeting of the board of supervisors in the same manner as original appointments are made. The board of supervisors may fill all unexpired terms of any commissioner.

Notwithstanding the appointive authority granted in this section to the board of supervisors, its legal and actual responsibilities, authority and function, subsequent to the creation of a district, shall be specifically limited to the appointive function and responsibilities outlined in Sections 49-28-21, 49-28-27 and 49-28-29. The operation, management, abolition or dissolution of a district, and all other matters in connection therewith, shall be vested solely and only in the board of commissioners to the specific exclusion of the board of supervisors, and the abolition, dissolution or termination of a district shall be accomplished only by unanimous resolution of the board of commissioners.

(2) The board of commissioners shall organize by electing one of its members as chairman and another as vice-chairman. The chairman shall preside at all meetings of the board and act as the chief executive officer of the board and of the district. The vice-chairman shall act in the absence or disability of the chairman. The board also shall elect and fix the compensation of a secretary-treasurer who may or may not be a member of the board. The secretary-treasurer shall keep all minutes and records of the board and safely keep all funds of the district. The secretary-treasurer shall execute a bond, payable to the district, in a sum and with security as shall be fixed and approved by the board of commissioners.

(3) Each person appointed as a commissioner, before entering upon the discharge of the duties of the office, shall execute a bond payable to the State of Mississippi in the penal sum of Ten Thousand Dollars ($10,000.00) conditioned that the person will faithfully discharge the duties of the office. Each bond shall be approved by and filed with the clerk of the board of supervisors.

(4) Each commissioner shall take and subscribe to an oath of office prescribed in Section 268, Mississippi Constitution of 1890, before the Chancery Clerk of the county in which the district is located, that the person will faithfully discharge the duties of the office of commissioner. The oath shall be filed with the Chancery Clerk and preserved with the official bond.

(5) A majority of the membership of the board of commissioners shall constitute a quorum. Except as otherwise required under this chapter, all official acts of the board of commissioners shall require a majority vote of the quorum.

(6) The board of commissioners may receive per diem compensation, if approved by the board of supervisors, in the same manner provided to officers of state boards, commissions and agencies in Section 25-3-69, Mississippi Code of 1972. However, the per diem compensation shall not exceed Two Hundred Dollars ($200.00) per month and shall not entitle any member of the board of commissioners to receive or be eligible for any state employee group insurance, retirement or other fringe benefits.

SOURCES: Laws, 1999, ch. 566, § 9, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-19. Powers and duties of district.

(1) Any district created under this chapter, acting by and through the board of commissioners of the district as its governing authority, shall have the following powers and duties:

(a) To sue and be sued;

(b) To adopt an official seal with which to attest the official acts and records of the board and district;

(c) To acquire by purchase, gift, devise and lease or any other mode of acquisition, other than by eminent domain, hold and dispose of real and personal property of every kind inside or outside the district;

(d) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds, leases or contracts for financial advisory services;

(e) To incur debts, to borrow money, to issue negotiable special improvement bonds, and to provide for the rights of the holders of those bonds;

(f) To fix, maintain, collect and revise charges and assessments for services rendered by or through the district;

(g) To pledge all or any part of the revenues of the district to the payment of its obligations;

(h) To make any covenants in connection with the issuance of bonds or to secure the payment of bonds that a private business corporation can make under the general laws of the state;

(i) To use any right-of-way, public right-of-way, easement, or other similar property or property rights held by the state or any political subdivision of the state necessary or convenient in connection with any project conducted by the district; however, the governing body of the political subdivision must first consent to the use;

(j) To enter into agreements with state and federal agencies for loans, grants, grants-in-aid, and other forms of assistance including, but not limited to, participation in the sale and purchase of bonds;

(k) To be deemed to have the same status as counties and municipalities with respect to payment of sales taxes on purchases made by the district;

(*l*) To do all acts necessary, proper or convenient in the exercise of the powers granted under this chapter;

(m) To contract with the United States of America, or any agency of the United States of America, the State of Mississippi, or any political subdivision of the State of Mississippi, or any agency, commission, authority, board or other entity thereof, or any municipality or municipalities, for any purpose under this chapter; and

(n) To contract with any person, partnership, corporation or other entity for the planning, design, construction, operation, maintenance or improvement of any project of the district, upon any terms, conditions and covenants as may be agreed upon by the contracting parties.

(2) Any district created under this chapter shall be vested with all the powers necessary and requisite for the accomplishment of the purpose for which the district is created. No enumeration of powers in this section shall be construed to impair or limit any general grant of power contained in this section nor to limit any grant to a power or powers of the same class or classes as those enumerated.

SOURCES: Laws, 1999, ch. 566, § 10, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-21. Power of eminent domain.

The board of supervisors may, upon petition by the board of commissioners of the district, exercise the power of eminent domain on behalf of the district wherever and whenever public necessity and convenience so requires.

SOURCES: Laws, 1999, ch. 566, § 11, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-23. District authorized to issue negotiable special improvement bonds for projects.

(1) The district may issue negotiable special improvement bonds to provide funds for the purpose of planning, design, construction, operation, maintenance or improvement of any project of the district, including acquisition of land. The bonds shall be payable primarily from special assessments authorized in Section 49-28-29 and, if provided in the proceedings authorizing the bonds, the avails of the ad valorem tax levy authorized in Section 49-28-27. In addition, if provided in the proceedings authorizing the bonds and agreed to by resolution of the board of supervisors authorizing the board of commissioners to make that pledge, the bonds shall also be payable from the avails of the ad valorem tax levy provided for in subsection (2) of this section, or from any

combination of monies from those special assessments and tax levies. The bonds may be issued without an election being held upon the question of their issuance and without the publication of any notice of intention to issue the bonds. The board of commissioners of the district shall issue bonds of the district by resolution spread upon the minutes of the board. The bonds shall contain covenants and provisions, be executed, bear interest at the rate or rates not to exceed fourteen percent (14%) per annum, be in denomination or denominations, be payable, both as to principal and interest, at the place or places, mature at the time or times not exceeding twenty-five (25) years from their date of issuance, as shall be determined by the board of commissioners and set forth in the resolution under which the bonds are issued. However, any bonds which are secured by a pledge of special assessments shall mature at the time or times not exceeding the time period over which the special assessments are payable, as determined by the board of commissioners under Section 49-28-29. Notwithstanding any provision of general law to the contrary, any bonds and interest coupons issued under this chapter shall possess all of the qualities of negotiable instruments, and the bonds, premium, if any, and interest thereon shall be exempt from all state, county, municipal and other taxation under the laws of the State of Mississippi. Any bonds issued under the authority of this chapter may be refunded in the manner provided in this chapter upon a finding by the board of commissioners that the refunding is in the public interest. Bonds for the improvement or extension of any structures or facilities of the district may be included with any refunding bonds. The bonds may be sold without the necessity of advertising for bids and may be sold by negotiated private sale and on any terms, conditions and covenants as may be agreed to by and between the issuing authority and the purchasers of the bonds. The total amount of bonds issued under this chapter shall not exceed One Million Dollars ($1,000,000.00).

(2) If provided in the proceedings authorizing the issuance of the bonds and agreed to by resolution of the board of supervisors authorizing the board of commissioners of the district to make a pledge, then when there are insufficient revenues received from special assessments authorized under Section 49-28-29 and the avails of the ad valorem tax levy authorized under Section 49-28-27, or from both together, according to the provisions made in the proceedings authorizing the issuance of the bonds, to meet the interest or principal payments, or both, when due on any bonds issued under this chapter (excluding for this purpose any amounts in a reserve fund for those bonds), then, upon certification of that fact by the board of commissioners of the district to the board of supervisors, the board of supervisors shall levy an ad valorem tax on all taxable property within the geographical limits of the district. The avails of the tax, together with any other monies available for that purpose, shall be sufficient to provide for the payment of the principal of and interest on the bonds as the principal and interest falls due. If provided in the proceedings for the issuance of the bonds, the avails of the tax may also be used to replenish any reserve fund established for the bonds.

SOURCES: Laws, 1999, ch. 566, § 12, eff from and after passage (approved Apr. 21, 1999.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the last sentence of subsection (1). The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 49-28-25. Purposes for which special improvement bond issued; district empowered to do any act to secure bonds or make them more marketable.

In addition to the purposes authorized by Section 49-28-23, any district created under this chapter may issue negotiable special improvement bonds of the district in the manner provided in Section 49-28-23, for any of the following purposes:

(a) To refund the outstanding bonds of the district upon a finding by the board of commissioners that the refunding is in the public interest;

(b) To improve or extend the structures or facilities of the district or to conduct projects of the district; and

(c) To enter into cooperative agreements with the state or federal government, or both, to obtain financial assistance in the form of loans or grants as may be available from the state or federal government, or both (reference to the state or federal government as used in this section shall specifically include any agency thereof).

The district may make any covenants and do any acts and things as may be necessary, convenient and desirable to secure the bonds or make the bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated in this chapter or expressly authorized in this chapter. The board of commissioners, in issuing the negotiable special improvement bonds, shall have the power to do all things required or necessary in the issuance of those bonds and for their execution which are not inconsistent with the Mississippi Constitution of 1890.

SOURCES: Laws, 1999, ch. 566, § 13, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-27. Authorization for ad valorem tax on real property.

(1) The board of supervisors of the county in which a district exists, may, according to the terms of the resolution and upon receipt of a resolution of the board of commissioners adopted by a three-fifths (3⁄5) majority of that board requesting the funds, levy a special tax, not to exceed four (4) mills annually, on all taxable real property in the district. The avails of the tax shall be paid over to the board of commissioners of the district to be used either for the support of the district, planning, design, construction, operation, maintenance or improvement of projects of the district or for the retirement of any bonds issued by the district, or for any combination of those uses.

(2) The proceeds derived from two (2) mills of the levy authorized in this section shall be included in the ten percent (10%) increase limitation under Section 27-39-321, and the proceeds derived from any additional millage levied under this subsection in excess of two (2) mills shall be excluded from that limitation for the first year of such additional levy and shall be included within that limitation in any year thereafter.

(3) Following the initial tax levy, the special tax levy under this subsection may be increased only when the board of supervisors, after receipt of the resolution of the board of commissioners requesting an increase and stating the proposed amount of the increase and the purposes for which the additional revenues shall be used, has determined the need for additional revenues, adopts a resolution declaring its intention to increase the levy and has held an election on the question of increasing the tax levy prescribed in this section. The notice calling for an election shall state the purposes for which the additional revenues shall be used and the amount of the tax levy to be imposed for those purposes. The tax levy may be increased only if the proposed increase is approved by a three-fifths (3/5) majority of those voting within the district. Only those qualified electors of the county which reside in the district may vote in the election. Subject to specific provisions of this paragraph to the contrary, the publication of notice and manner of holding the election within the district shall be as prescribed by law for the holding of elections for the issuance of bonds by the board of supervisors. The election shall be held only within the district.

SOURCES: Laws, 1999, ch. 566, § 14, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-29. Special assessments.

In addition to the sources of funding provided for in Sections 49-28-1 through 49-28-27, the board of commissioners, if approved by the board of supervisors in the resolution creating the district, may levy and collect special assessments on certain property located in the district to provide funds for the purposes for which bonds may be issued under Sections 49-28-23 and 49-28-25. The board of commissioners may pledge the receipts from the special assessments to secure the payment of the principal of, premium, if any, and interest on any bonds authorized to be issued under this chapter. Special assessments may be levied on the property within the boundaries of the district at the time the special assessments are levied. Any special assessments authorized under this section shall be levied and collected in the manner provided in Chapter 41, Title 21, Mississippi Code of 1972. The board may secure bonds of the district solely from the receipts of special assessments, or may pledge such receipts in addition to the pledge of receipts from any tax levy authorized in this chapter, or from any combination of monies from the special assessments and tax levies. Bonds issued under Section 49-28-23 or Section 49-28-25 shall be payable as to principal, premium, if any, and interest solely from the sources authorized in this chapter.

SOURCES: Laws, 1999, ch. 566, § 15, eff from and after passage (approved Apr. 21, 1999.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the section's subsection designators. The subsection number "(1)" at the beginning of the first sentence was deleted. The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 49-28-31. Special assessments; bonds secured by pledge thereof.

Any bonds secured by a pledge of the special assessments shall mature at any time or times, not exceeding twenty-five (25) years from the date of the bonds, and may be in fully registered form or in bearer form, as determined by the board of commissioners.

SOURCES: Laws, 1999, ch. 566, § 16, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-33. Special assessments; payment.

All special assessments levied under this chapter shall be payable in equal annual installments over a period not to exceed twenty-five (25) years, as determined by the board of commissioners, with interest from the date of the confirmation of the assessment at a rate, to be fixed by the board of commissioners, which will produce sufficient funds for the payment of all or a specified portion of the principal of and interest on the bonds as they mature and accrue and for fees and expenses for a paying agent or trustee, or both for the bonds. The amount to be paid through the special assessments may be limited by the board of commissioners to the amounts needed for the purposes specified in this section. Any property owner who shall not have taken an appeal from the assessment, upon failure to pay the assessment in full within thirty (30) days from the date of confirmation, shall be deemed to have elected to pay the assessment in installments as provided in this section, and shall be deemed to have admitted the legality of the assessment, and the right to contest the validity of the assessment shall be waived. The installments of the assessment shall be due and payable at the same time that the annual real property tax becomes due and payable, commencing with the first county tax levy which is payable after the expiration of thirty (30) days from the date of confirmation of the assessment.

SOURCES: Laws, 1999, ch. 566, § 17, eff from and after passage (approved Apr. 21, 1999.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first and third sentences. The words "excess of" were deleted following "not to exceed" in the first sentence, and "provide d" was changed to "provided" in the third sentence. The Joint Committee ratified the corrections at its May 16, 2002, meeting.

§ 49-28-35. Distribution of costs and expenses of special improvements among the properties affected.

The resolution declaring the intent of the board of commissioners to proceed with the special improvement projects of the district may direct that all of the expenses of the property, structures or facilities of the district, or the part of the expenses that the board of commissioners shall charge upon the property in the district shall be assessed according to the frontage rule or area rule, as outlined in this section. Bonds may be issued for one or more projects, and the area and method of assessment for each project shall be specified in the resolution declaring the intent of the board of commissioners of the district to proceed with that project. The resolution declaring the intent of the board of commissioners to proceed with any special improvement shall:

(a) Define the properties in the area to be benefited by each improvement, with each improvement being designated as a project;

(b) Fix the amount or percentage of the charge to be levied upon the property benefited;

(c) Designate the minimum and maximum number of years between the date of issuance of the bonds and the maturity of those bonds;

(d) Delineate the method of determining the amount of special assessments to be levied on each lot or parcel of land in the benefited area; and

(e) Designate the minimum and maximum number of equal approximately equal annual installments that the board of commissioners may later allow for the payment of assessments with interest on those assessments.

If the board of commissioners determines that the front foot rule is the most equitable method of distributing the cost among the properties, then the resolution shall direct that the cost to be assessed against each lot or parcel of land shall be determined by dividing the entire cost to be assessed by the total number of front feet of real property abutting upon the shoreline on which the project is located and which will be subject to the special assessment, and multiplying the quotient by the total number of front feet in any particular lot or parcel of land fronting in the beach on which the project is located. The result of this formula shall be assessed against each lot or parcel of land for the owner's part of the cost of the entire improvement to be paid through special assessments.

If the board of commissioners determines that the area rule is the most equitable method of distributing the cost among the properties, then the resolution shall direct that the cost to be assessed against each lot or parcel of land shall be determined by dividing the entire cost to be assessed by the total number of acres or square feet in the area being benefited and that is subject to the special assessment, and multiplying the quotient by the total number of acres or square feet in any particular lot or parcel of land. The result of this formula shall be assessed against each lot or parcel of land for the owner's part of the cost of the entire improvement to be paid through special assessments.

SOURCES: Laws, 1999, ch. 566, § 18, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-37. Written protest objecting to assessments.

If the owners of a majority of the front footage of the property to be assessed under the front foot rule, or if the owners of a majority of the area of the property to be assessed under the area rule, as described in Section 49-28-35, file a written protest objecting to the assessments authorized under this chapter, then the board of commissioners shall not proceed with the special assessment.

SOURCES: Laws, 1999, ch. 566, § 19, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-39. Financial assistance or cooperation from state or federal government.

The board of commissioners of any district created under this chapter shall have the authority to enter into cooperative agreements with the state or federal government, or both, to obtain financial assistance in the form of loans or grants as may be available from the state or federal government, or both. The board of commissioners may execute and deliver at private sale notes or bonds as evidence of the indebtedness in the form and subject to the terms and conditions as may be imposed by the state or federal government, or both. The board of commissioners may pledge the income and revenues of the district, or the income and revenues from any part of the area embraced in the district, in payment thereof. The district may do all things necessary to secure the financial aid or cooperation of the state or federal government, or both, in the planning, design, construction, operation, maintenance or improvement of projects of the district.

SOURCES: Laws, 1999, ch. 566, § 20, eff from and after passage (approved Apr. 21, 1999.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence. The words "The district to do all things" were changed to "The district may do all things." The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 49-28-41. Chapter as full and complete authority.

This chapter, without reference to any statute, is full and complete authority for the creation of the district and for the issuance of bonds. No proceedings shall be required for the creation of the district or for the issuance of bonds other than those provided for and required in this chapter. All necessary powers to be exercised by the board of supervisors and by the board of commissioners of the district in order to carry out this chapter are conferred under this section.

SOURCES: Laws, 1999, ch. 566, § 21, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-43. Publication of financial statement.

Within ninety (90) days after the close of each fiscal year, the board of commissioners shall publish in a newspaper of general circulation in the county in which the district is located a sworn statement showing the financial condition of the district, including the revenues and expenses of the district for the fiscal year just ended. The statement shall also be furnished to the board of supervisors of the county in which the district lies.

SOURCES: Laws, 1999, ch. 566, § 22, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-45. Validation of bonds.

Any bonds issued under the provisions of this chapter may be submitted for validation under the provisions of Chapter 13, Title 31, Mississippi Code of 1972.

SOURCES: Laws, 1999, ch. 566, § 23, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-47. Chapter to be liberally construed.

This chapter shall be liberally construed for the purposes herein set out, the powers hereby granted being additional, cumulative and supplemental to any power granted to a board of supervisors by any general or local and private act of the Legislature.

SOURCES: Laws, 1999, ch. 566, § 24, eff from and after passage (approved Apr. 21, 1999.)

§ 49-28-49. Severability.

If any provisions of this chapter shall be held to be invalid by any court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SOURCES: Laws, 1999, ch. 566, § 25, eff from and after passage (approved Apr. 21, 1999.)

CHAPTER 29

Environmental Protection Council
[Repealed]

Editor's Note — Provisions similar to the provisions formerly found in this chapter were formerly found in § 5-3-151 et seq.

§§ 49-29-1 through 49-29-11. Repealed.

Repealed by Laws of 1993, ch. 516, § 10, eff from and after June 30, 1993.

§ 49-29-1. [En Laws, 1981, ch. 544, § 1; repealed by Laws, 1981, ch. 544, § 8; En Laws, 1988, ch. 594, § 1; Am Laws, 1989, ch. 333, § 1]

§ 49-29-3. [En Laws, 1981, ch. 544, § 2; repealed by Laws, 1981, ch. 544, § 8; En Laws, 1988, ch. 594, § 2]

§ 49-29-5. [En Laws, 1981, ch. 544, § 3; repealed by Laws, 1981, ch. 544, § 8; En Laws, 1988, ch. 594, § 3]

§ 49-29-7. [En Laws, 1981, ch. 544, § 4; repealed by Laws, 1981, ch. 544, § 8; En Laws, 1988, ch. 594, § 4; Laws, 1989, ch. 476, § 1; Laws, 1990, ch. 506, § 4]

§ 49-29-9. [En Laws, 1981, ch. 544, § 5; repealed by Laws, 1981, ch. 544, § 8; En Laws, 1988, ch. 594, § 5]

§ 49-29-11. [Laws, 1989, ch. 333, § 2; Am Laws, 1991, ch. 398, § 1]

Editor's Note — Former § 49-29-1 created the Environmental Protection Council and specified its purpose.

Former § 49-29-3 specified the membership of the council and authorized the eliciting of support of various organizations.

Former § 49-29-5 authorized the payment of per diem and travel expenses to council members.

Former § 49-29-7 specified the duties and powers of the council.

Former § 49-29-9 authorized the council to employ staff and hire consultants.

Former § 49-29-11 specified the repeal date of this chapter.

CHAPTER 31

Mississippi Multimedia Pollution Prevention Act

General Provisions 49-31-11
Task Force on Recycling 49-31-41

GENERAL PROVISIONS

Sec.
49-31-1. Short title.
49-31-3. Legislative findings.
49-31-5. Legislative intent.
49-31-7. Purposes of chapter.
49-31-9. Definitions.
49-31-11. Mississippi Multimedia Pollution Prevention Program; purposes; rules and regulations; coordination and promotion of alternatives to waste disposal.
49-31-13. Comprehensive study of status of pollution prevention and recycling activities.
49-31-15. State agencies, branches and institutions to establish recycling programs and source reduction programs.
49-31-17. Mississippi Department of Environmental Quality and the Mississippi Development Authority to assist and promote recycling industry; reports.
49-31-19. Department of Education to develop waste minimization awareness program; advisory role of Department of Environmental Quality; program of student instruction in minimization of waste.
49-31-21. Generators of hazardous waste to provide waste minimization plans; contents of plan; annual update; review of plan; report of wastes generated and minimized.
49-31-23. Repealed.
49-31-25. Pollution prevention fee; penalty for failure to pay.
49-31-27. Repealed.

§ 49-31-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Multimedia Pollution Prevention Act."

SOURCES: Laws, 1990, ch. 507, § 1; Laws, 1994, ch. 637 § 1, eff from and after July 1, 1994.

Cross References — Use of excess fees generated by commercial hazardous waste management facility to fund waste minimization, see § 17-18-33.

RESEARCH REFERENCES

Law Reviews. Hauberg and Dawkins, Framework for an Environmental Crimes Act in Mississippi. 61 Miss. L. J. 255 (Fall 1991).

§ 49-31-3. Legislative findings.

The Legislature finds that:

(a) Inefficient and improper methods of managing waste create hazards to public health, cause pollution of the air and water resources and constitute a waste of natural resources;

(b) Problems in preventing pollution are statewide in scope and necessitate state action in improving methods and processes to promote more efficient methods of managing and reducing the waste generated in the state;

(c) The economic and population growth of our state and improvements in the standard of living enjoyed by our population have required increased industrial production which, coupled with expanding commercial and agricultural operations, have resulted in a rise in the amounts of waste generated;

(d) State government should take a proactive role to assist business, industry, academic institutions, governmental entities and the citizens of the state in the development of a coordinated pollution prevention program that addresses the need for both environmental protection and economic growth;

(e) There are significant opportunities for business, industry, academic institutions and governmental entities to eliminate or reduce the generation of waste at the source through cost-effective pollution prevention technologies and procedures. Use of these technologies and procedures offers business, industry, academic institutions and governmental entities savings in materials, waste management and liability costs;

(f) The opportunities for pollution prevention are often not realized because existing regulations focus more upon treatment and disposal than pollution prevention and do not emphasize multimedia management of waste; and

(g) Pollution prevention is the ultimate goal in waste management. The use of pollution prevention policies and technologies as an integral part of the waste management system, thereby reducing the need for the creation of additional management capacity, is strongly endorsed.

SOURCES: Laws, 1990, ch. 507, § 2; Laws, 1994, ch. 637 § 2, eff from and after July 1, 1994.

§ 49-31-5. Legislative intent.

(1) It is the intent of the Legislature to promote pollution prevention, require state agency recycling programs, encourage the recycling industry and promote public education on waste management issues.

(2) The Legislature declares it to be the policy of the State of Mississippi that the generation of waste should be reduced or eliminated at the source, whenever feasible; waste that is generated should be recycled or reused whenever feasible; waste that cannot be reduced or recycled should be treated in an environmentally safe manner; and disposal or other permitted release

into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

(3) The state's goal is to reduce the quantity of waste generated within Mississippi by a minimum of twenty-five percent (25%) by January 1, 1996. For purposes of measuring the reduction of hazardous waste, the department shall use as a baseline the quantity of hazardous waste generated, as reported for the 1989 calendar year. For purposes of measuring the reduction of nonhazardous solid waste, the department shall use as a baseline information submitted to the State Tax Commission pursuant to Section 17-17-219 for the 1992 calendar year. For other wastes, the department shall establish a baseline.

SOURCES: Laws, 1990, ch. 507, § 3; Laws, 1994, ch. 637 § 3, eff from and after July 1, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 49-31-7. Purposes of chapter.

The purposes of this chapter are:

(a) To establish state policy with regard to the role of pollution prevention and recycling in waste management;

(b) To promote pollution prevention, reuse and recycling of waste in lieu of treatment or disposal of waste;

(c) To require all state agencies to aid and promote the development of recycling through the establishment of recycling programs;

(d) To require all state agencies to aid and promote the development of recycling through the establishment of policies for the procurement of goods containing recycled materials;

(e) To establish statewide pollution prevention and waste reduction goals;

(f) To provide for the creation and administration of the Mississippi Multimedia Pollution Prevention Program;

(g) To promote pollution prevention through the requirement of educational curricula for primary and secondary schools;

(h) To foster the education of the general public and the training of waste management professionals to reduce the production of waste, to prevent pollution and to encourage recycling;

(i) To establish and maintain a cooperative state program of planning and technical and financial assistance for the use of pollution prevention and recycling in waste management;

(j) To mandate waste minimization planning by certain generators and facility operators for the reduction of waste;

(k) To encourage the development of pollution prevention and recycling programs as a means of managing waste and conserving resources through planning, grants, technical assistance and other incentives;

(*l*) To encourage local governments to develop and implement recycling programs within their jurisdictions to return valuable materials to productive use and to protect capacity at waste management facilities;

(m) To further the development of the state's recycling industry by promoting the successful development of markets for recycled items; and

(n) To provide for the funding of the Mississippi Multimedia Pollution Prevention Program through the establishment of a pollution prevention fee.

SOURCES: Laws, 1990, ch. 507, § 4; Laws, 1994, ch. 637 § 4, eff from and after July 1, 1994.

Cross References — Comprehensive multimedia waste minimization program, see § 49-31-11.

Waste minimization tax, see § 49-31-25.

§ 49-31-9. Definitions.

For purposes of this chapter the following terms shall have the meanings ascribed to them in this section or in Section 17-17-3 unless the context clearly indicates otherwise:

(a) "Department" means the Department of Environmental Quality.

(b) "EPCRA" means the Emergency Planning and Community Right-To-Know Act, Public Law 99-499, as amended.

(c) "Facility operator" means an operator of a facility required to file a report of toxic chemical releases under Section 313 of EPCRA.

(d) "Generator" means any person whose act or process produces waste.

(e) "Multimedia" means all environmental media including, but not limited to air, water and land.

(f) "Pollution prevention" means any action taken by business, industry, government or individual consumers to conserve natural resources while providing and using needed products in a manner that prevents or reduces the generation, disposal or release of pollutants to the environment. Pollution prevention does not include dewatering, dilution or evaporation before handling, release, storage, treatment or disposal of hazardous waste.

(g) "Recovered materials" means those materials having known recycling potential, which can be feasibly recycled and have been diverted or removed from the waste stream for sale, use or reuse, by separation, collection or processing.

(h) "Recyclable materials" means those materials which are reasonably capable of being recycled and which would otherwise be processed or disposed of as waste.

(i) "Recycling" means the use, reuse or reclamation of a waste. Recycling does not include the burning of waste as a fuel for the recovery of energy or the use of waste treatment technologies.

(j) "Waste" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid or other substances which may pollute the lands, waters or air of the state.

(k) "Waste minimization" means the reduction, to the extent feasible, of waste that is generated or subsequently treated, stored or disposed of. It includes any source reduction or recycling activity undertaken by a generator or facility operator that results in either (i) the reduction of total volume or quantity of waste, or (ii) the reduction of toxicity or other characteristics of hazardous waste, or both, so long as the reduction does not result in the displacement of pollutants from one medium to another and is consistent with the goal of minimizing present and future threats to human health and the environment.

SOURCES: Laws, 1990, ch. 507, § 5; Laws, 1994, ch. 637 § 5, eff from and after July 1, 1994.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph. The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Department of Environmental Quality, see § 49-2-4.

Federal Aspects — Section 313 of Public Law 99-499 is codified as 42 USCS 11023. Atomic Energy Act of 1954 is codified as 42 USCS 2011 et seq.

§ 49-31-11. Mississippi Multimedia Pollution Prevention Program; purposes; rules and regulations; coordination and promotion of alternatives to waste disposal.

(1) There is hereby created in the Department of Environmental Quality, the Mississippi Multimedia Pollution Prevention Program, herein referred to as "program," for the following purposes:

(a) To compile, organize and make available for distribution information on pollution prevention and recycling technologies and procedures;

(b) To sponsor and conduct conferences and workshops on pollution prevention and recycling;

(c) To facilitate and promote the transfer of pollution prevention and recycling technologies and procedures among business, industry, academic institutions and governmental entities;

(d) To provide funds, as may be appropriated or otherwise made available therefor, to business, industry, academic institutions, private organizations and governmental entities:

(i) To conduct demonstrations or pilot programs utilizing innovative pollution prevention and recycling technologies and procedures;

(ii) To defray costs of basic and applied research on pollution prevention and recycling; and

(iii) To subsidize costs of conducting pollution prevention potential analyses and studies, and developing, purchasing and implementing pollution prevention and recycling technologies and procedures or for other related purposes;

(e) To develop the necessary programs, information and materials:

(i) To collect data to assist in establishing program priorities and evaluation of the progress of pollution prevention and recycling;

(ii) To train business, industry, academic institutions and governmental entities to promote and provide information about pollution prevention and recycling practices and their applicability;

(iii) To establish and implement waste exchange programs;

(iv) To prioritize current state grant funding assistance for local government recycling;

(v) To provide technical assistance programs specific to the development of businesses that recycle;

(vi) To produce a report that shall be available to the public with information on the amount of unrecycled products within the state;

(f) To increase public education and public awareness of waste management issues;

(g) To provide pollution prevention and recycling technical assistance to industries, businesses and local governments;

(h) To participate in state, federal and industrial networks of individuals and groups actively involved in pollution prevention and recycling activities and promotion; and

(i) To provide assistance to counties and municipalities for the establishment of regional recycling centers at regional correctional facilities.

(2) The Commission on Environmental Quality may adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under this chapter.

(3) The Commission on Environmental Quality shall coordinate recycling activities among municipalities and local governing authorities and promote pollution prevention, recycling, reuse of wastes, in lieu of treatment and disposal of such wastes.

SOURCES: Laws, 1990, ch. 507, § 6; Laws, 1994, ch. 637 § 6; Laws, 2006, ch. 587, § 6; Laws, 2010, ch. 318, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (1)(i); and made minor stylistic changes.

Cross References — Department of Environmental Quality, see § 49-2-4.

Commission on Environmental Quality, see § 49-2-5.

§ 49-31-13. Comprehensive study of status of pollution prevention and recycling activities.

(1) The department shall complete a comprehensive study of the status of pollution prevention and recycling activities in Mississippi. The study shall address, but not be limited to, the following:

(a) The types and quantities of wastes generated in the state, the existing system for management of wastes, and pollution prevention and recycling efforts to date in the state;

(b) The advisability, feasibility and potential impacts of waste stream reduction through statutory restraints;

(c) The identification of key business, industry, academic institutions and governmental entities which should receive priorities in technical assistance;

(d) The establishment of the program priorities, objectives, missions and goals for pollution prevention and recycling in the state, including a methodology for assessing the efficiency and effectiveness of the program in attaining program goals and objectives;

(e) The development of a methodology to assess progress in minimizing waste, preventing pollution and recycling in the state; and

(f) Any other information deemed necessary by the department to carry out the purposes of this chapter.

(2) The study shall be presented to the Chairman of the Conservation and Water Resources Committee of the Mississippi House of Representatives and the Environmental Protection, Conservation and Water Resources Committee of the Mississippi Senate by the second day of each legislative session.

SOURCES: Laws, 1990, ch. 507, § 7; Laws, 1994, ch. 637 § 7; Laws, 2006, ch. 587, § 7, eff from and after July 1, 2006.

§ 49-31-15. State agencies, branches and institutions to establish recycling programs and source reduction programs.

It shall be the duty of each state agency, the judicial branch of state government, the state institutions of higher learning and community colleges to:

(a) Establish a program, in cooperation with the Department of Environmental Quality and the Department of Finance and Administration, for the collection of recyclable materials as determined by the Department of Environmental Quality, generated in state offices throughout the state.

(b) Provide procedures for collecting and storing recyclable materials, containers for storing recyclable materials and contractual arrangements with buyers of recyclable materials.

(c) Evaluate the amount of recyclable materials recycled and make all necessary modifications to the recycling program to ensure that recyclable materials, as determined by the Department of Environmental Quality, are effectively and practically recycled.

(d) Establish and implement, in cooperation with the Department of Environmental Quality and the Department of Finance and Administration, a source reduction program for materials, as determined by the Department of Environmental Quality, used in the course of agency operations. The program shall be designed and implemented to achieve the maximum feasible source reduction of waste as a result of agency operations.

SOURCES: Laws, 1990, ch. 507, § 8; Laws, 2006, ch. 587, § 8, eff from and after July 1, 2006.

Editor's Note — Laws of 2009, ch. 308, §§ 1 through 3 provide:

"SECTION 1. (1) The Legislature finds that electronic equipment waste is among the fastest growing segment of Mississippi's solid waste stream. The state must frequently upgrade and replace computers, telecommunication devices and other technologically sophisticated equipment necessary to the efficient operation of state government. The necessary purchase of up-to-date computers, telecommunications devices and other technological equipment for state government use often results in a surplus of property that, while unfit for state government purposes, is still useful and marketable or transferable to other public or nonprofit entities for less complex and less high-speed dependent use. In addition, due to the sensitive information contained in almost all electronic equipment memory components, a stringent data management process is required to ensure that sensitive data is not inadvertently compromised. By the time the surplus property is delivered to the Office of Surplus Property of the Department of Finance and Administration, it is generally technologically obsolete and has lost considerable value resulting in a significant waste of potential revenue to the State of Mississippi.

"(2) The purpose of this act is to establish a process for the development of state policy for Recycling and Asset Disposition (READ) Services targeting state agency-generated obsolete electronic equipment in order to:

"(2)(a) Achieve the maximum possible benefit from use of state agency-owned electronic equipment;

"(2)(b) Ensure a data security process that prevents the inadvertent release of sensitive state-owned electronic information to unauthorized parties during the disposal process;

"(2)(c) Achieve maximum benefit from sale and/or recycling of surplus state agency electronic equipment; and

"(2)(d) Protect the public health, safety and the environment by mandating that steps be taken to address the solid waste management of electronic equipment and solid waste statewide.

"SECTION 2. For the purposes of this act, the following words and phrases shall have the meanings ascribed to them in this section:

"(a) 'Agency' means every department, division, office, board, commission and institution of this state, including state-supported institutions of higher education.

"(b) 'Electronic Equipment' means a personal computer, computer component, audio player, videocassette player, facsimile machine, copy machine, cellular telephone, wireless paging device, or any electronic item containing an intact or broken cathode ray tube. An electronic item containing a cathode ray tube includes a television, computer monitor, or any other cathode ray tube monitor or display device.

"(c) 'Data Security' means the removal of sensitive information contained in almost all electronic memory and data storage components, using a stringent data management process to ensure that sensitive data is not inadvertently compromised.

"(d) 'Enterprise Security Policy' means the document published by ITS in accordance with the Mississippi Administrative Procedures Act to establish standards for the creation of a technology environment within the State of Mississippi agencies that maintains system security, data integrity and privacy by preventing unauthorized access to data and by preventing misuse of, damage to or loss of data.

"(e) 'Logistical/Inventory Support' means coordinating electronic equipment pick-up, transportation of items to a central location for testing, auditing, and redistributing items depending on the item's condition. Of the equipment collected, the process will also determine which items will be donated or redeployed, which items will be upgraded, remarketed, and resold, and which items will be dismantled, reclaimed and recycled.

"(f) 'Management and Technical Support' means to provide management and technical advice to ensure that electronic items are recycled if possible and not merely sent to landfills for disposal. The management process at a minimum includes: overseeing the testing, demanufacture, and reclamation process; determining the feasibility of redeployment and remarketing; reporting on the destination of major components; and certifying that usable items are reduced to reusable components and/or recycled.

"(g) 'Recycling' means the use, reuse or reclamation of obsolete electronic equipment and associated materials.

"(h) 'Recycling Electronics and Asset Disposition (READ) Services' means recycling and otherwise disposing of obsolete electronic equipment generated by state government in an environmentally responsible manner, that ensures the data security of the asset and that maximizes the state's return on investment.

"(i) 'Surplus Property' means obsolete electronic equipment no longer in use in an agency or entity and which may have residual market value in reuse or in recyclable materials.

"(j) 'Valuation Process' means to determine the current market conditions and identify equipment that can be resold at a fair and reasonable price. Part of the validation process includes a determination on what type of a return on investment can be achieved."

"SECTION 3. (1) There is hereby created a committee for the review of issues, existing regulations and potential solutions to address READ Services to the agencies of the state. The committee shall be composed of one (1) member from each of the following state agencies appointed by the executive director of the agency:

"(1)(a) Mississippi Department of Finance and Administration (DFA);

"(1)(b) Mississippi Office of the State Auditor (OSA);

"(1)(c) Mississippi Department of Environmental Quality (MDEQ); and

"(1)(d) Mississippi Department of Information Technology Services (ITS).

"(2) It is the intent of the Legislature that the committee, no later than November 1, 2009, develop and provide to the Legislature and the Office of the Governor recommendations regarding a policy for READ Services to the agencies of the state. Such policy should address, but not be limited to:

"(2)(a) Requirements for certification that any and all data and software have been removed from the electronic equipment in accordance with the State's Enterprise Security Policy, along with recommendations for contractual services or equipment as related to data security;

"(2)(b) Provisions for extending the useful life of electronic equipment by maximizing reuse of such equipment by other state agencies;

"(2)(c) Provisions for donation of electronic equipment to public schools, local governments or other nonprofit organizations under certain defined circumstances;

"(2)(d) Regulations and recommendations for logistical/inventory support, management and technical support, and a valuation process of READ Services as related to state agency-generated electronic equipment surplus property;

"(2)(e) Recommendations for funding the READ Services for state agency-generated electronic equipment surplus property; and

"(2)(f) Recommendations related to the environmental considerations for the safe disposal of hazardous components contained in obsolete electronic equipment."

§ 49-31-17. Mississippi Department of Environmental Quality and the Mississippi Development Authority to assist and promote recycling industry; reports.

(1) The Mississippi Department of Environmental Quality and the Mississippi Development Authority shall assist and actively promote the recycling

industry in the state. Assistance and promotion of the recycling industry shall include, but is not limited to:

(a) Identification and analysis, in cooperation with the Department of Environmental Quality, of components of the state's recycling industry and present and potential markets for recyclable materials in the state or other states;

(b) Provision of information on the availability and benefits of using recycled materials to business, industry, academic institutions and governmental entities within the state;

(c) Distribution of any material prepared in implementing this section to business, industry, academic institutions, governmental entities and the general public upon request; and

(d) Active promotion of the present markets and development of the potential markets of recyclable materials through the resources of the Mississippi Department of Environmental Quality and the Mississippi Development Authority.

(2) By December 31, 2006, the Mississippi Development Authority shall assist the Task Force on Recycling in preparing a report assessing the recycling industry and recyclable materials markets in the state for the Mississippi Legislature.

SOURCES: Laws, 1990, ch. 507, § 9; Laws, 1991, ch. 494 § 4; Laws, 2006, ch. 587, § 9, eff from and after July 1, 2006.

Cross References — Nonhazardous solid waste planning, see §§ 17-17-201 et seq.
Department of Environmental Quality, see § 49-2-4.
Department of Economic and Community Development, see §§ 57-1-1 et seq.

§ 49-31-19. Department of Education to develop waste minimization awareness program; advisory role of Department of Environmental Quality; program of student instruction in minimization of waste.

(1) On or before July 1, 2007, the Department of Education with advice of the Department of Environmental Quality is directed to develop or select curriculum, including materials and resource guides, for a waste minimization awareness program at the elementary and secondary levels of education.

(2) In order to orient students and their families to the minimization of waste and to encourage the participation of schools, communities and families in waste minimization programs, the school board of each school district in the state shall provide a program of student instruction in the minimization of waste materials. The instruction shall be provided at both the elementary and secondary levels of education.

SOURCES: Laws, 1990, ch. 507, § 10; Laws, 2006, ch. 587, § 10, eff from and after July 1, 2006.

Cross References — Department of Education, see §§ 37-3-1 et seq.

§ 49-31-21. Generators of hazardous waste to provide waste minimization plans; contents of plan; annual update; review of plan; report of wastes generated and minimized.

(1) The department shall require waste minimization plans to be provided by each generator of hazardous waste who is regulated as a large quantity generator or a small quantity generator under Mississippi hazardous waste management regulations and each facility operator required to file a report under Section 313 of EPCRA. The generators and facility operators shall provide a plan for each site where waste is generated or chemicals are released.

(2) Waste minimization plans for large quantity generators and for facility operators required to file a report under Section 313 of EPCRA, shall include, at a minimum:

(a) A written policy describing ownership and management support for pollution prevention and waste minimization and implementation of the plan;

(b) The scope and objectives of the plan, including the evaluation of technologies, procedures and personnel training programs to ensure waste minimization;

(c) An explanation and documentation of waste minimization efforts completed or in progress before the first reporting date;

(d) An analysis of waste streams, and identification of opportunities to eliminate waste generation. The analysis shall include review of individual processes and facilities and other activities where wastes may be generated, evaluation of data on the types, amounts and hazardous and toxic constituents of waste generated, and potential waste minimization techniques applicable to those wastes;

(e) An identification of waste management costs;

(f) An identification of employee awareness and training programs to involve employees in waste minimization planning and implementation to the maximum extent feasible;

(g) The establishment of performance goals for the minimization of wastes which shall be expressed in numeric terms, to the extent practicable.

(3) The department shall develop appropriate, but less stringent, requirements for waste minimization plans to be prepared by small quantity generators.

(4) All generators and facility operators required to prepare a waste minimization plan shall update annually their waste minimization plan. The annual update shall include at a minimum:

(a) An analysis and quantification of progress made, if any, in waste minimization, relative to each performance goal established under subsection (2) (g) of this section; and

(b) Any amendments to the waste minimization plan and an explanation of the need for the amendments.

(5) For purposes of this section, a generator or facility operator shall permit the department or its designee to review the waste minimization plan.

(6) From the waste minimization plan and each annual update, the generator or facility operator shall submit to the department a certified report of the types and quantities of wastes generated, and the types and quantities of wastes minimized. To the extent practicable, the department shall coordinate the submission of this certified report with other reporting requirements placed on large quantity and small quantity hazardous waste generators and facility operators.

(7) The certified report shall include a narrative summary explaining the waste generation and minimization data, a description of goals and progress made in minimizing the generation of wastes, and a description of any impediments to the minimization of wastes.

SOURCES: Laws, 1990, ch. 507, § 12; Laws, 1994, ch. 637 § 8; Laws, 2006, ch. 587, § 11, eff from and after July 1, 2006.

Cross References — Plans and updates developed under this section not subject to Public Records Act provisions, see § 25-61-9.

Federal Aspects — Section 313 of EPCRA (Public Law 99-499) is codified as 42 USCS 11023.

§ 49-31-23. Repealed.

Repealed by Laws of 2002, ch. 483, § 5, eff from and after July 1, 2002.

[Laws, 1990, ch. 507, § 13; Laws, 1994, ch. 637 § 9, eff from and after July 1, 1994.]

Editor's Note — Former § 49-31-23 created the Multimedia Pollution Prevention Fund.

Laws of 2002, ch. 483, § 5, which repealed this section, provided that any remaining balance in the Multimedia Pollution Prevention Fund shall be transferred to the Environmental Protection Trust Fund created in § 17-17-217.

Cross References — Deposit of proceeds of waste minimization tax into this fund, see § 49-31-25.

Local Governments Solid Waste Assistance Fund, see § 17-17-65.

Environmental Protection Trust Fund, see § 17-17-217.

Right-Way-To-Throw-Away Program, see §§ 17-17-439 et seq.

Mississippi Multimedia Pollution Prevention Program, see § 49-31-11.

§ 49-31-25. Pollution prevention fee; penalty for failure to pay.

(1) There is imposed upon each large quantity generator and each small quantity generator that is regulated under the Mississippi hazardous waste management regulations and each facility operator, a pollution prevention fee. The fee upon each large quantity generator and each small quantity generator shall be measured by the quantity of hazardous waste which that generator generates annually. The fee upon each facility operator shall be measured by the quantity of chemicals which each facility releases annually and reports pursuant to Section 313 of EPCRA. For a fee payer that is both a large quantity hazardous waste generator and a facility operator, the fee shall be measured by

adding the quantity of fugitive and stack air emissions reported under Section 313 of EPCRA plus the quantity of hazardous waste generated annually. For a fee payer that is both a small quantity hazardous waste generator and a facility operator, the fee shall be measured by the quantity of chemicals released as reported pursuant to Section 313 of EPCRA. The fee shall be assessed in an amount according to the following schedule:

TONS GENERATED/RELEASED			ANNUAL FEE
0.01	to	9.99	$ 250.00
10.00	to	99.99	$ 500.00
100.00	to	999.99	$ 1,500.00
1,000.00	to	9,999.99	$ 2,500.00
10,000.00	to	49,999.99	$10,000.00
50,000.00 and above			$50,000.00

The fee shall be due and payable to the department not later than September 1 of each year, or not later than a date specified by the department in the invoice which shall be no less than thirty (30) days following receipt of an invoice from the department, whichever is later. The fee shall be based on the quantity of hazardous waste generated and/or chemicals released during the preceding calendar year. The department shall annually prepare an invoice for the amount of the pollution prevention fee due from each generator or facility operator and furnish it to each generator or facility operator. The proceeds of the fee shall be deposited into the Environmental Protection Trust Fund created in Section 17-17-217.

(2) From and after July 1, 1995, the department shall exclude from the calculation of the pollution prevention fee any hazardous waste recycled on-site or shipped off-site for recycling as reported on the Mississippi Annual Hazardous Waste Report or its equivalent and any chemicals recycled on-site or shipped off-site for recycling as reported under Section 313 of EPCRA. The hazardous waste generator or the facility operator shall submit any information the department deems necessary to substantiate that the hazardous waste or chemicals were recycled.

(3) At the discretion of the commission, a generator or facility operator shall be liable for a penalty not to exceed three (3) times the amount of the fee due and payable for failure to pay the fee on or before the due date, plus the amount necessary to reimburse the cost of collection.

(4) From and after July 1, 1995, the department shall exclude from any calculation of pollution prevention fee any hazardous waste or chemical for which a Title V permit fee is assessed to the same generator or facility operator.

SOURCES: Laws, 1990, ch. 507, § 14; Laws, 1994, ch. 637 § 10; Laws, 1995, ch. 560, § 1; Laws, 2002, ch. 483, § 4, eff from and after July 1, 2002.

Cross References — Local Governments Solid Waste Assistance Fund, see § 17-17-65.

Environmental Protection Trust Fund, see § 17-17-217.

Right-Way-To-Throw-Away Program, see §§ 17-17-439 et seq.
Mississippi Multimedia Pollution Prevention Program, see § 49-31-11.

Federal Aspects — Section 313 of EPCRA (Public Law 99-499) is codified as 42 USCS 11023.

§ 49-31-27. Repealed.

Repealed by Laws of 1994, ch. 637, § 11, eff from and after July 1, 1994. [Laws, 1990, ch. 507, § 16]

Editor's Note — Former § 49-31-27 provided that this Chapter shall not be applicable to medical waste.

TASK FORCE ON RECYCLING

Sec.
49-31-41. Task Force on Recycling created; purpose; membership.
49-31-43. Duties of task force; election of chairman; meetings; administration; compensation.

§ 49-31-41. Task Force on Recycling created; purpose; membership.

(1) There is created the Task Force on Recycling, which will be responsible for developing a comprehensive plan to establish a system to recycle household items. The task force will serve as a consensus group designed to coordinate efforts by the state, counties and municipalities to create an effective recycling system in the state.

(2) The task force shall consist of nineteen (19) members.

(a) Six (6) members shall be appointed by the Governor from each of the following industries:

(i) Plastic recycling;
(ii) Metal recycling;
(iii) Paper recycling;
(iv) Glass recycling;
(v) Household and highway hazardous waste recycling; and
(vi) Solid waste disposal.

(b) In addition to the members appointed by the Governor, membership of the task force will include one (1) representative from each of the following agencies, associations or entities, as designated by each respective agency, association or entity:

(i) Mississippi Municipal League;
(ii) Mississippi Association of Supervisors;
(iii) Department of Corrections;
(iv) Department of Environmental Quality;
(v) Cooperative Extension Service, one who is a county home economist;
(vi) Sierra Club;

(vii) Keep Mississippi Beautiful;

(viii) Mississippi Malt Beverage Association;

(ix) Mississippi Soft Drink Association;

(x) Mississippi Retail Association;

(xi) Mississippi Manufacturer's Association;

(xii) Mississippi Petroleum Marketers and Convenience Stores Association; and

(xiii) Mississippi Farm Bureau Federation.

SOURCES: Laws, 2004, ch. 536, § 3, eff from and after July 1, 2004.

§ 49-31-43. Duties of task force; election of chairman; meetings; administration; compensation.

(1) The Task Force on Recycling has the following duties:

(a) Undertake a statistical and qualitative examination of the benefits of recycling in Mississippi;

(b) Develop a comprehensive plan to recycle household items;

(c) Report to the Mississippi State Legislature by December 31, 2004, with a system to allow counties and municipalities to collect items to be recycled.

(2) The Chairman for the task force shall be elected by its membership. The task force shall convene by August 1, 2004. The task force shall meet and conduct business at least quarterly. All meetings of the task force will be open to the public, with opportunities for public comment provided on a regular basis. Notice of all meetings shall be given as provided in the Open Meetings Act and appropriate notice also shall be given to all persons so requesting of the date, time and place of each meeting.

(3)(a) The task force is assigned to the Mississippi Department of Environmental Quality for administrative purposes only.

(b) Membership in the task force shall be voluntary. No member of the task force shall be compensated or reimbursed with state funds for the discharge of duties associated with this task force.

SOURCES: Laws, 2004, ch. 536, § 4, eff from and after July 1, 2004.

CHAPTER 33

Mississippi Agricultural and Forestry Activity Act

Sec.

49-33-1. Short title.
49-33-3. Purpose.
49-33-5. Declaration of policy.
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49-33-13. Constitutional requirements and legal challenges.
49-33-15. Severability.
49-33-17. Other provisions to which chapter is subject.
49-33-19. Repealed.

§ 49-33-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agricultural and Forestry Activity Act."

SOURCES: Laws, 1994, ch. 647, § 3; reenacted and amended, Laws, 1995, ch. 379, § 1, eff from and after July 1, 1995.

§ 49-33-3. Purpose.

The purpose of this chapter is to establish the policy of the State of Mississippi as allowing owners of property classified as forest or agricultural land and owners of timber, wood and forest products on forest land owned by another to conduct forestry or agricultural activities, or if the State of Mississippi prohibits or severely limits such forestry or agricultural activities, to compensate the owners for their loss.

SOURCES: Laws, 1994, ch. 647, § 4; reenacted and amended, Laws, 1995, ch. 379, § 2, eff from and after July 1, 1995.

§ 49-33-5. Declaration of policy.

It is declared the policy of the State of Mississippi to conserve, protect and encourage the continued use, development and improvement of forest and agricultural land within the state for the production of agricultural products and timber, wood and forest products including nongame species. The vital and significant contributions of forestry and agricultural activities to the economy of the State of Mississippi and the use of land in the state as forest and agricultural lands are essential factors in providing for the favorable quality of life in the State of Mississippi.

SOURCES: Laws, 1994, ch. 647, § 5; reenacted and amended, Laws, 1995, ch. 379, § 3, eff from and after July 1, 1995.

§ 49-33-7. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Act" shall mean the Mississippi Agricultural and Forestry Activity Act.

(b) "Forest or agricultural land" means any land in the state devoted to the growing of trees or the commercial production of agricultural products or timber, wood or forest products including nongame species where the land is classified by the county as forest, agricultural or open land and being used as forest or agricultural land in the performance of forestry or agricultural activities.

(c) "Forestry activities" means any activity on forest land associated with the reforesting, growing, managing, protecting and harvesting of timber, wood and forest products including nongame species.

(d) "Agricultural activities" means any activities included under Section 27-35-50(4) as agricultural purposes.

(e) "Inverse condemnation" means any action by the State of Mississippi that prohibits or severely limits the right of an owner to conduct forestry or agricultural activities on forest or agricultural land. Inverse condemnation shall not include an action by the state that is:

(i) A taking as defined in paragraph (*l*) of this section;

(ii) A result of police power to prohibit activities that are noxious in fact or are harmful to the public health and safety; or

(iii) An order issued as a result of a violation of state law; or

(iv) An action as prescribed by the Mississippi Commission on Wildlife, Fisheries and Parks as set forth in Sections 49-7-1 through 49-7-257 or concerning the closing or shortening of open seasons as set forth in Section 49-1-29(a).

(f) "Noxious in fact" means an activity that constitutes a public nuisance under common law.

(g) "Owner" means the holder of legal or equitable title to:

(i) Forest or agricultural land or timber, wood or forest products, including the management of nongame species thereon; or

(ii) Personal property rights associated with conducting forestry or agricultural activities on forest or agricultural land.

(h) "Prohibits or severely limits" means to reduce the fair market value of forest or agricultural land (or any part or parcel thereof) or timber, wood or forest products including nongame species (or any part or parcel thereof) or personal property rights associated with conducting forestry or agricultural activities on the forest or agricultural land by more than forty percent (40%) of their value before the action.

(i) "Public health and safety" means actions by the State of Mississippi based upon its police powers. Public health and safety actions prohibiting or severely restricting forestry or agricultural activities shall be:

(i) Taken only in response to real and substantial threats to public health and safety;

(ii) Designated to significantly advance the health and safety purpose; and

(iii) No greater than necessary to achieve the health and safety purpose.

(j) "State of Mississippi" or "state" means the State of Mississippi, any county, municipality or any political subdivision thereof.

(k) "State law" means any statute, rule, regulation, ordinance, resolution or similar action by the State of Mississippi validly existing and as interpreted on October 1, 1994. State law shall not include:

(i) Any judicial or executive interpretation of a state law after October 1, 1994, that prohibits or severely limits the conducting of forestry or agricultural activities that were not prohibited or severely limited before October 1, 1994; or

(ii) Any legislative amendment, interpretation or enactment by the state after October 1, 1994, that prohibits or severely limits the conducting of forestry or agricultural activities (except such actions that are the result of police power to prohibit activities that are noxious in fact or are harmful to the public health and safety).

(*l*) "Taking" means any action by the State of Mississippi under the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, or Article III, Section 17 of the Mississippi Constitution where the owner is entitled to compensation for the fair market value of the owner's property or some part thereof (or required to forfeit the property in accordance with state forfeiture laws). Taking shall include the formal exercise of the power of eminent domain, the seizure or forfeiture of property for violations of law or as evidence in criminal proceedings or the issuance of orders authorized by statute or issued by a state agency or court of law for violations of state law. Taking shall not include the repealing of any state action that lessens interference with the conduct of forestry or agricultural activities.

(m) "Personal property" means any interest acquired by deed, lease, contract or agreement in standing or severed timber, wood or forest products.

SOURCES: Laws, 1994, ch. 647, § 6; reenacted and amended, Laws, 1995, ch. 379, § 4, eff from and after July 1, 1995.

§ 49-33-9. Inverse condemnation.

(1) Right of action: Any action by the State of Mississippi that constitutes an inverse condemnation of forest or agricultural land, timber, wood or forest products, including nongame species or personal property rights associated with conducting forestry or agricultural activities, shall give the owner a cause of action under Section 11-46-1 et seq. for the payment of awards against the entity or entities causing the inverse condemnation, notwithstanding any provision of this chapter to the contrary. The owner shall have the right to file an inverse condemnation action before any court having jurisdiction over the county in which the forest or agricultural land is located. A determination that

a use is noxious in fact or possesses a demonstrable harm to the public health and safety is not binding upon a court of law and a judicial review of the action shall be de novo.

(2) Subsequent repeal or rescission by the state: The entity sued in any inverse condemnation action shall have the right to repeal the action complained of in the suit before a decision becoming final. Such repeal shall entitle the owner to recover its damages arising out of the action before the repeal, and, in the discretion of the court, its costs of litigation (including reasonable attorney and expert witness fees). Subsequent repeal of the action by the state after a decision has become final shall not entitle the state to refuse payment, obtain a return of payment (if made) or result in ownership in the property by the state (absent a taking of one hundred percent (100%) of the property).

(3) Payment of awards for inverse condemnation: Payment of awards for inverse condemnation shall be made by the entity or entities as determined by the court subject to applicable limits provided in Section 11-46-15. Payment shall not result in ownership in the property by the state (absent a taking of one hundred percent (100%) of the property). If more than one (1) entity is involved, the payment shall be made in the percentage of liability as allocated by the trier of fact in the inverse condemnation action. If any county, municipality, or political subdivision of the state whose actions constitute inverse condemnation as defined in this chapter are unable to pay the costs awarded, then the action causing the inverse condemnation shall be rescinded within sixty (60) days after the judgment of the court.

SOURCES: Laws, 1994, ch. 647, § 7; reenacted and amended, Laws, 1995, ch. 379, § 5, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Eminent Domain § 419.

§ 49-33-11. Conditional waivers prohibited.

The state shall not make a waiver of the provisions of this chapter a condition for approval of the use or continued use of real property or the issuance of any permit or other entitlement. The acceptance by an owner of any approval of use, continued use, permit or other entitlement shall not constitute a waiver of the rights of the owner to compensation for inverse condemnation.

SOURCES: Laws, 1994, ch. 647, § 8; reenacted, Laws, 1995, ch. 379, § 6, eff from and after July 1, 1995.

§ 49-33-13. Constitutional requirements and legal challenges.

This chapter shall not affect any right or remedy granted an owner under the United States or Mississippi Constitutions or the laws of the United States and the State of Mississippi. Nothing in this chapter shall be construed to preclude an owner from bringing a legal challenge and seeking remedies at law or equity arising out of any action of the State of Mississippi regardless of whether the action constituted a taking, an inverse condemnation, or resulted in a diminution in value of forty percent (40%) or less.

SOURCES: Laws, 1994, ch. 647, § 9; reenacted, Laws, 1995, ch. 379, § 7, eff from and after July 1, 1995.

§ 49-33-15. Severability.

The provisions of this chapter are severable, and if any provision of this chapter is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision.

SOURCES: Laws, 1994, ch. 647, § 10; reenacted, Laws, 1995, ch. 379, § 8, eff from and after July 1, 1995.

§ 49-33-17. Other provisions to which chapter is subject.

All the provisions of this chapter are subject to Sections 11-46-1 et seq., 49-2-9, 49-2-13, 49-17-17, 17-17-1, 41-67-3 and 41-67-15, Mississippi Code of 1972.

SOURCES: Laws, 1994, ch. 647, § 11; reenacted, Laws, 1995, ch. 379, § 9, eff from and after July 1, 1995.

§ 49-33-19. Repealed.

Repealed by Laws of 1995, ch. 379, § 10, eff from and after July 1, 1995. [En Laws, 1994, ch. 647, § 12]

Editor's Note — Former § 49-33-19 was entitled: Repeal of chapter.

CHAPTER 35

Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List

Article 1.	Mississippi Brownfields Voluntary Cleanup and Redevelopment Act	49-35-1
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ARTICLE 1.

MISSISSIPPI BROWNFIELDS VOLUNTARY CLEANUP AND REDEVELOPMENT ACT.

SEC.	
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49-35-7.	Application; required information and agreement terms; remediation.
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49-35-21.	Implementation of article; date; promulgation of regulations.
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49-35-25.	Payment of costs; Brownfields Cleanup and Redevelopment Trust Fund; collection and use of funds; suspension of activities.
49-35-27.	Periodic report; contents; incentive programs.

§ 49-35-1. Short title.

This article shall be known and may be cited as the "Mississippi Brownfields Voluntary Cleanup and Redevelopment Act."

SOURCES: Laws, 1998, ch. 528, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 2003, ch. 440, § 1 added a new article entitled: "Remediation of Property on National Priorities List" to this chapter.

RESEARCH REFERENCES

Law Reviews. Wells, A Review of the Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, 19 Miss C.L. Rev. 235 (Fall, 1998).

§ 49-35-3. Legislative findings.

The Legislature finds:

(a) There are properties in Mississippi, often referred to as "brownfields," that are contaminated or are perceived to be contaminated by past activities, but are potential locations for redevelopment.

(b) Brownfields development and redevelopment is impaired by the potential liability associated with the actual or perceived risk of contamination.

(c) The safe development or redevelopment of brownfields will benefit the citizens of Mississippi in many ways, including improving the tax base of local governments and creating job opportunities for citizens in the vicinity of brownfields.

(d) The reduction of public health and environmental hazards on existing brownfield sites is essential to creating a better quality of life for the citizens of this state.

(e) This article will provide incentives for the voluntary cleanup of brownfield property without use of taxpayer funds.

SOURCES: Laws, 1998, ch. 528, § 2, eff from and after July 1, 1998.

§ 49-35-5. Definitions.

The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Brownfield agreement" means an agreement between the commission and a brownfield party for the remediation of a brownfield agreement site.

(b) "Brownfield agreement site" means brownfield property that is remediated under a brownfield agreement. The site shall consist of the brownfield property that is the subject of the application and any other brownfield property (i) for which the source of contamination is environmental contamination or activities on or under the brownfield property that is the subject of the application, and (ii) concerning which the commission determines that remediation is necessary.

(c) "Brownfield party" means any person who desires to execute and implement a brownfield agreement, including but not limited to, the record owner of the brownfield agreement site, a person who desires to either buy or sell the brownfield agreement site for the purpose of developing or redeveloping that site and the successors and assigns of these owners and persons, and local governments and other political subdivisions that desire to promote the development or redevelopment of the brownfield agreement site.

(d) "Brownfield property" means any property where use is limited by actual or potential environmental contamination, or the perception of environmental contamination, and that is or may be subject to remediation under any state environmental program or under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCS 9601 et seq. (1997) (CERCLA), but does not include any of the following:

(i) Those sites proposed by the United States Environmental Protection Agency for the National Priorities List (NPL) but not listed on the NPL or those sites listed on the NPL, except those NPL sites for which the United States Environmental Protection Agency has issued certificates of completion of the remediation set forth in the records of decision for those sites;

(ii) Those sites for which an order or enforcement action is issued or entered under CERCLA or Sections 3008(h), 3013(a) or 7003(c) of the Resource Conservation and Recovery Act of 1976, as amended, 42 USCS 6901 et seq. (1994 and Supp. 1997) (RCRA) and which is still in effect; and

(iii) Those sites undergoing corrective action under RCRA Section 3004(u), 3004(v) or 3008(h), except those sites that the United States Environmental Protection Agency determines have completed corrective action.

(e) "Commission" means the Commission on Environmental Quality.

(f) "Department" means the Mississippi Department of Environmental Quality.

(g) "Engineering control" means a modification to a brownfield agreement site to reduce or eliminate the potential for exposure to contaminants. These modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatment, or slurry walls, but shall not include the exclusive use of security fencing.

(h) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(i) "Land-use restriction" means the limitation on use of or access to a brownfield agreement site to reduce or eliminate the potential for exposure to contaminants. These restrictions may include, but are not limited to, deed restrictions, use restrictions, or restrictive zoning.

(j) "Local government" means a county or municipality within the State of Mississippi.

(k) "Person" means person as defined in Section 17-17-3.

(*l*) "Potentially responsible party" means a person who is or may be liable for remediation under a remedial program.

SOURCES: Laws, 1998, ch. 528, § 3, eff from and after July 1, 1998.

§ 49-35-7. Application; required information and agreement terms; remediation.

(1)(a) Any brownfield party shall provide the department, in an application as prescribed by the commission, information necessary to demonstrate that:

(i) As a result of the proposed remediation, the brownfield property will be suitable for the use or uses specified in the application while fully protecting public health and the environment;

(ii) The brownfield party has or can obtain the financial, managerial, and technical resources to implement fully and complete the proposed remediation and assure the safe use of the brownfield property;

(iii) The current owner of the brownfield property that is the subject of the application is an applicant or has given written approval for submission of the application; and

(iv) The brownfield party will comply with all applicable procedural requirements.

(b) The commission or the department may require the brownfield party to provide other information that is reasonably related to the application or to the brownfield party.

(2) Within thirty (30) days after submission of the application, the commission shall establish, by order, a written schedule, including time for the identification of other brownfield property (i) for which the source of contamination is environmental contamination or activities on or under the brownfield property that is the subject of the application, and (ii) concerning which the commission determines that remediation is necessary, for the processing of the application by the department.

(3) If brownfield property other than that property which is the subject of the original application is identified, the applicant shall obtain written approval from that brownfield property owner for inclusion of that brownfield property in the brownfield agreement site.

(4) Following the review of the application and any other information available to the department, the department shall prepare a proposed brownfield agreement. In preparation of the agreement, the department shall consult with the applicant brownfield party.

(5) A brownfield agreement shall contain a description of the brownfield agreement site sufficient to serve as a legal description of that site and, as applicable, a statement providing:

(a) A description of all remediation to be conducted on or under the brownfield agreement site, including:

(i) A description of specific areas where remediation is to be conducted;

(ii) The remediation method or methods to be employed;

(iii) The financial, technical and managerial resources that the brownfield party will make available;

(iv) A schedule of remediation activities;

(v) Remediation requirements that are based on public health and environmental risks specific to the brownfield agreement site as established under subsection (6) of this section;

(vi) A schedule for implementation and completion of the remediation; and

(vii) Any land-use restrictions or engineering controls constituting any part of the remediation required by the commission in the brownfield agreement.

(b) The proposed uses of the brownfield agreement site after all remediation required by the commission is completed.

(c) A schedule for administration of the brownfield agreement by the department.

(d) Requirements, as deemed appropriate by the commission, for reporting on the progress of remediation conducted on or under the brownfield agreement site.

(e) Any other provisions necessary to implement the brownfield agreement.

(6) A brownfield agreement shall establish remediation requirements that are based on public health and environmental risks specific to the brownfield agreement site. In establishing the risk-based remediation requirements in a brownfield agreement, the commission shall consider the use of appropriate land-use restrictions or engineering controls or both proposed by the brownfield party. The commission may determine that permanent engineering controls in conjunction with appropriate land-use restrictions satisfy the remediation required by the commission in the brownfield agreement. These risk-based remediation requirements may include contaminant-specific, state-specific, site-specific and/or likelihood of risk methodologies for the implementation of these risk-based remediation requirements. Any party to a brownfield agreement who complies with the requirements of a brownfield agreement may rely on these risk-based remediation requirements, land-use restrictions and engineering controls as governing the extent of remediation required to be performed by the brownfield party on or under the brownfield agreement site for all purposes of this article, including liability protection, subject to the limitations in Section 49-35-15(5). Any risk-based remediation requirements, land-use restrictions and engineering controls implemented under a brownfield agreement shall be conducted in a cost-effective manner, consistent with projected future uses of the brownfield agreement site.

(7) During the remediation process, the commission may modify a brownfield agreement after appropriate public participation, if the commission receives new information demonstrating that a contaminant on or under the brownfield agreement site poses less risk than the risk that formed a basis for the remediation requirements.

(8) The applicant brownfield party and the commission may agree to remediation of a brownfield property which is not the subject of the application to a risk level of unrestricted use.

SOURCES: Laws, 1998, ch. 528, § 4, eff from and after July 1, 1998.

§ 49-35-9. Agreements reached before consideration by commission; public notice; notice to property owners; public hearings.

(1)(a) If the department and a brownfield party reach a proposed agreement, then at least thirty (30) days before the date that the commission considers the proposed brownfield agreement under Section 49-35-11, the department shall publish a public notice in a newspaper of general circulation in the county or counties in which the brownfield agreement site is located. The public notice shall (i) describe the proposed brownfield agreement, including the proposed brownfield agreement site; (ii) request public comment on the proposed agreement within thirty (30) days after the date of publication of the notice; and (iii) provide the date and location of the commission's consideration of the proposed brownfield agreement. A copy of the proposed brownfield agreement shall be filed for public inspection in the county courthouse of the county or counties in which the proposed brownfield agreement site is located.

(b) The commission shall notify in writing the governing authority of the local government in which the proposed site is located.

(c) At the time of publication of the public notice under paragraph (a) of this subsection, an applicant brownfield party shall notify by certified mail, each record owner of property contiguous to the brownfield agreement site identified by the brownfield party after examination of the land records of the county or counties in which the brownfield agreement site is located at the address contained in the county records, if available. No brownfield agreement shall be declared invalid based on failure of any person to receive notice under this subsection.

(d) The commission may by regulation require additional public notice.

(2) The department may conduct a public hearing on the proposed brownfield agreement in the county in which the majority of the proposed brownfield agreement site is located, or in any other location in the local area of the proposed brownfield agreement site that is convenient to the members of the public who may have an interest in the proposed brownfield agreement. The department shall publish a notice of the hearing in a newspaper of general circulation in the county or counties in which the proposed brownfield agreement site is located. The department shall provide to the commission for review before its consideration of the proposed brownfield agreement all public comments and the transcript of any public hearing on the proposed brownfield agreement.

SOURCES: Laws, 1998, ch. 528, § 5, eff from and after July 1, 1998.

§ 49-35-11. Approval and execution of agreements; modifications; changes in surface ownership; powers of executive director.

(1) If the commission finds that the proposed brownfield agreement complies with this article and regulations, the commission, by order, shall approve the proposed brownfield agreement. After approval of the brownfield agreement, the executive director and the brownfield party shall execute the brownfield agreement.

(2) The commission may enter into a brownfield agreement as proposed by the department or may modify that agreement before entering into it. The commission subsequently may modify any brownfield agreement by entry of an order. The commission orders issued under this article shall be reviewable as provided in Section 49-17-41. The commission may disapprove a proposed brownfield agreement or decline to enter into a brownfield agreement by entry of an order. In the order, the commission shall state the reasons for disapproval of the agreement or declining to enter into the agreement.

(3) Until the executive director issues a "no further action" letter under Section 49-35-15, approval from the commission shall be required for any sale, conveyance or other change in surface ownership of any portion of the brownfield agreement site owned by the brownfield party desiring to make the change in ownership, if the new surface owner will perform any obligations under the brownfield agreement. That brownfield party and the new surface owner jointly shall provide information satisfactory to the commission that the new surface owner has the financial, managerial and technical resources to complete performance of the brownfield agreement obligations to be transferred and that the new surface owner agrees to complete this performance. If the commission determines that the new surface owner has the financial, managerial, and technical resources to complete this performance and has agreed to do so, the commission shall issue an order approving the transfer.

(4) Except for orders issued under subsections (1) and (2) of this section and Section 49-35-13(2), the commission, under any conditions it may prescribe, may authorize the executive director to issue any orders required under this article. A decision by the executive director shall be a decision of the commission and shall be reviewable as provided under Section 49-17-41.

SOURCES: Laws, 1998, ch. 528, § 6, eff from and after July 1, 1998.

§ 49-35-13. Violations; time period for corrections; penalties.

(1) Any material failure of a brownfield party or the agents or employees of a brownfield party to comply with the brownfield agreement constitutes a violation of this section by the brownfield party. If a brownfield party violates this section the commission shall issue an order requiring the brownfield party to correct the violation in an appropriate time period established by the order.

(2) If the brownfield party fails to comply with an order issued under subsection (1) of this section, the brownfield party shall be subject to removal

of all liability protection afforded by the brownfield agreement under Section 49-35-15 and shall be subject to civil penalties under Section 49-17-43.

(3) This section shall not create a defense against the imposition of criminal or civil penalties or other administrative remedies authorized by law for violations of law caused by the brownfield party while implementing or failing to implement the brownfield agreement.

SOURCES: Laws, 1998, ch. 528, § 7, eff from and after July 1, 1998.

§ 49-35-15. Liability protections; exceptions; additional remediation; conditions; completed performance; order by commission; letter.

(1) Except as provided under subsection (5) of this section and Section 49-35-13(2), a brownfield party who executes a brownfield agreement shall be relieved of liability to all persons other than the United States for: (a) remediation of the brownfield agreement site other than the remediation required by the brownfield agreement; and (b) all costs reasonably related to the remediation other than the remediation and costs required by the brownfield agreement or this article. However, this article shall not affect the right of any person to seek relief against any party to the brownfield agreement who may have liability with respect to a brownfield agreement site, except as provided in this section.

(2) The liability protection provided under this section applies to the following persons to the same extent as to a brownfield party:

(a) Any person under the direction or control of the brownfield party who directs or contracts for remediation or redevelopment of the brownfield agreement site;

(b) Any current owner and any future owner of the brownfield agreement site;

(c) Any person who develops, redevelops or lawfully occupies the brownfield agreement site;

(d) Any successor or assign of any person to whom the liability protection provided under this section applies; and

(e) Any lender or fiduciary that provided financing for remediation or redevelopment of the brownfield agreement site.

(3) A person who conducts an environmental assessment on a brownfield agreement site and who is not otherwise a potentially responsible party shall not become a potentially responsible party as a result of conducting the environmental assessment, unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment.

(4) The liability protection provided under this section shall become effective upon execution of a brownfield agreement and shall remain effective, unless the commission removes the liability protection under Section 49-35-13(2).

(5) A brownfield party who completes the remediation required under a brownfield agreement and any other person who receives liability protection under this section shall not be required to perform additional remediation on or under the brownfield agreement site unless:

(a) The brownfield party provides to the commission false information or fails to disclose to the commission relevant information about environmental contamination on or under the brownfield agreement site that forms a basis for the brownfield agreement or that is offered to demonstrate compliance with the brownfield agreement;

(b) New information becomes available after execution of the brownfield agreement indicating the existence of previously unknown contaminants or an area of previously unknown environmental contamination that has not been remediated to standards required by applicable federal or state law other than this article. The brownfield agreement may be amended to include remediation of any previously unknown contaminants and any additional areas in the same brownfield agreement site;

(c) The level of risk to public health or the environment resulting from the brownfield agreement site is increased beyond the level that forms a basis for the risk-based remediation requirements in the brownfield agreement due to changes in exposure conditions, including (i) a change in land use at the site or contiguous to the site that increases the probability of exposure to contaminants on or under the brownfield agreement site or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfield agreement site fully protective of public health and the environment as provided in the brownfield agreement;

(d) The department obtains new information after execution of the brownfield agreement about a contaminant on or under the brownfield agreement site that increases the risk to public health or the environment on or under the brownfield agreement site beyond the level that is the basis for the risk-based remediation requirements in the brownfield agreement and in a manner or to a degree not anticipated in the brownfield agreement; or

(e) A brownfield party fails to file a timely and proper notice of brownfield agreement site under Section 49-35-17.

(6) Upon completion of the brownfield agreement, the brownfield party may petition the commission to determine that the performance of the brownfield agreement has been completed. If the commission determines after conducting an inspection of the brownfield agreement site that the brownfield party has completed the brownfield agreement, the commission shall issue an order. Following issuance of an order by the commission, the executive director shall issue a "no further action" letter. The letter shall include the following statement: "Based upon the information provided by (brownfield agreement party) concerning property located at (location), it is the opinion of the Commission on Environmental Quality that (brownfield agreement party) has successfully and satisfactorily implemented and completed the approved brownfield agreement. No further action is required to assure that the remediation required under the brownfield agreement is protective of public

health and the environment in accordance with the existing and proposed uses of this property."

SOURCES: Laws, 1998, ch. 528, § 8, eff from and after July 1, 1998.

§ 49-35-17. Proposed notice of agreement site; required information; certified copy of agreement and notice to be filed; disclosures; cancellation of notice of agreement site.

(1) A brownfield party entering into a brownfield agreement shall submit to the department for its approval a proposed notice of brownfield agreement site before execution of the brownfield agreement as provided in Section 49-35-11.

(2) A notice of brownfield agreement site (a) shall be entitled "Notice of Brownfield Agreement Site", (b) shall include a survey plat of the brownfield agreement site described in the brownfield agreement that has been prepared and certified by a professional land surveyor, (c) shall include a legal description of the brownfield agreement site, and (d) shall identify the following:

(i) The location and dimensions of the areas of potential environmental contamination with respect to permanently surveyed benchmarks;

(ii) The type, location, and quantity of contaminants known to exist on or under the brownfield agreement site;

(iii) All land-use restrictions on the current or future use of the brownfield agreement site. These land-use restrictions may apply to activities on or under the brownfield agreement site, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining; and

(iv) All engineering controls included in the brownfield agreement.

(3)(a) Within fifteen (15) days after the brownfield agreement is executed, the brownfield party shall file a certified copy of the brownfield agreement and the notice of the brownfield agreement site in the office of the chancery clerk of the county in which the site is located. The chancery clerk shall record and enter the notice of the brownfield agreement site and the brownfield agreement in the land records in accordance with Section 89-5-33 and collect the fees provided in Section 25-7-9. Any deed or other instrument conveying an interest in brownfield property shall state in the deed or instrument that the property is brownfield property and subject to a brownfield agreement, unless the notice is canceled under subsection (4) of this section.

(b) If the notice has not been canceled under subsection (4) of this section, the seller of brownfield property shall disclose in the contract for the purchase of the brownfield property that the property is brownfield property and subject to a brownfield agreement.

(4) If a brownfield party remediates a brownfield agreement site to a risk level of unrestricted use, the brownfield party may petition the commission to cancel the notice of brownfield agreement site. If the commission issues an order canceling the notice, the current owner of the brownfield agreement site

shall file a statement issued by the executive director in accordance with the commission's order canceling the notice in the office of the chancery clerk in any county in which the brownfield agreement site is located. The executive director's statement shall contain the names of the owners of the brownfield agreement site as shown in the notice of brownfield agreement site and reference the book and page where the notice is recorded. After collecting the proper fee fixed in Section 25-7-9, the chancery clerk shall record the executive director's statement as provided in subsection (3) of this section. The chancery clerk shall make a marginal entry on the notice of brownfield agreement site showing the date of cancellation and the book and page where the executive director's statement is recorded, and the chancery clerk shall sign the entry.

SOURCES: Laws, 1998, ch. 528, § 9, eff from and after July 1, 1998.

§ 49-35-19. Enforcement of land-use restrictions or engineering controls.

(1) Any land-use restriction or engineering control in a brownfield agreement and in a notice of brownfield agreement site filed under this section may be enforced by:

(a) Any current owner of the brownfield agreement site;

(b) The commission, by initiating an administrative proceeding or by filing a civil action, without first having exhausted all available administrative remedies;

(c) Any local government having jurisdiction over any part of the brownfield agreement site by filing a civil action, without the local government having first exhausted all available administrative remedies; or

(d) Any person provided liability protection under this article who will lose liability protection if the land-use restriction or engineering control is violated.

(2) Adjacent property owners may enforce any land-use restriction contained in a brownfield agreement or in a notice of brownfield agreement site filed under this section.

(3) A land-use restriction or engineering control shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular brownfield property within the brownfield agreement site. Any person who owns or leases brownfield property within the brownfield agreement site subject to a land-use restriction or engineering control under this section shall abide by the land-use restriction or engineering control.

SOURCES: Laws, 1998, ch. 528, § 10, eff from and after July 1, 1998.

§ 49-35-21. Implementation of article; date; promulgation of regulations.

In accordance with Section 49-2-9, the commission shall promulgate regulations necessary to implement this article by January 1, 1999. Those regulations may include provisions for determining the eligibility of any person to enter into a brownfield agreement; criteria for inclusion of brownfield property in a brownfield agreement site, including brownfield property under an existing commission agreement or order; requirements for submission of additional information as part of the application or processing of the application and additional requirements for public notice.

SOURCES: Laws, 1998, ch. 528, § 11, eff from and after July 1, 1998.

§ 49-35-23. Restrictions on effect of article.

This article shall not:

(a) Affect the authority of local governments to regulate land use under applicable statutes. The use or uses of the brownfield agreement site and any land-use restrictions or engineering controls in the brownfield agreement shall be consistent with local land-use regulations adopted under applicable statutes;

(b) Amend, modify, repeal, or otherwise alter any provision of law available to the commission relating to enforcement of violations of federal or state law within its jurisdiction, including civil and criminal penalties;

(c) Prevent or impede the immediate response of the department or responsible party to an emergency that involves an imminent or actual release of a contaminant that threatens public health or the environment;

(d) Relieve a person receiving liability protection under this section from any liability for environmental contamination later caused or made worse by that person on or under a brownfield agreement site;

(e) Affect the right of any person who may have liability with respect to the brownfield agreement site to seek contribution from any other person who may have liability with respect to the brownfield agreement site and who does not have liability protection under this article;

(f) Prevent the commission from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required by the federal government to be enforced as a condition for the department to receive or maintain program authorization, delegation, primacy, or federal funds;

(g) Create a defense against the imposition of criminal and civil penalties or other administrative enforcement remedies authorized by law and imposed as the result of the illegal disposal of solid waste or a regulated substance or for the pollution of the land, air, or waters of this state on or under a brownfield agreement site;

(h) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment; or

(i) Create or convey any real or personal property rights, tangible or intangible, to any person.

SOURCES: Laws, 1998, ch. 528, § 12, eff from and after July 1, 1998.

§ 49-35-25. Payment of costs; Brownfields Cleanup and Redevelopment Trust Fund; collection and use of funds; suspension of activities.

(1) The brownfield party who submits a brownfield agreement application shall pay all reasonable direct and indirect costs of the department associated with the processing of the brownfield agreement application and administration of the brownfield agreement less the advance costs required in subsection (2) of this section.

(2) A brownfield party who submits a brownfield agreement application for review by the department shall pay advance costs of Two Thousand Dollars ($2,000.00) at the time the application is submitted to the department.

(3) The commission shall set by order a schedule of costs for the processing of the brownfield agreement applications and the administration of brownfield agreements by the department.

(4)(a) There is created in the State Treasury a fund to be designated as the "Brownfields Cleanup and Redevelopment Trust Fund," referred to in this section as "fund," to be administered by the executive director.

(b) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the processing of the brownfield agreement applications and the administration of brownfield agreements.

(c) Expenditures may be made from the fund upon requisition by the executive director.

(d) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the fund.

(e) The fund may receive monies from any available public or private source, including, but not limited to, collection of costs, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(f) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year.

(5) All monies collected under this section shall be deposited into the fund.

(6) The commission may delegate to the department responsibility for the collection of costs in subsections (1) and (2) of this section.

(7) All costs under subsection (1) of this section shall be due before a date specified by the department in an invoice which shall be no less than thirty (30) days following the invoice date. If any part of the costs that are imposed is not paid within thirty (30) days after the due date, a penalty of up to twenty-five percent (25%) of the amount due may be imposed and be added to that amount. Any penalty collected under this section shall be deposited into the fund. If the department pursues legal action to collect costs incurred, reasonable attorney's fees and costs may be assessed against the delinquent party.

(8) Any person required to pay costs under this section who disagrees with the calculation or applicability of the costs may petition the commission for a hearing in accordance with Section 49-17-35. Any hearing shall be in accordance with Section 49-17-33.

(9) Costs collected under this section shall not supplant or reduce in any way the general fund appropriation to the department for the administration of this program.

(10) The department may suspend any activities or actions related to the processing of the brownfield agreement application or administration of a brownfield agreement, if the brownfield party or parties fails to pay any required costs or penalties imposed under this section.

(11) Nothing in this section affects any existing program at the department or affects any authority of the commission or department to take any action authorized by law.

SOURCES: Laws, 1998, ch. 528, § 13, eff from and after July 1, 1998.

§ 49-35-27. Periodic report; contents; incentive programs.

(1) Before January 1 of each year, the department shall report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Environmental Protection, Conservation and Water Resources Committee and the Chairman of the House Conservation and Water Resources Committee on the status of the implementation of the Mississippi Brownfields Voluntary Cleanup and Redevelopment Program. The report shall include a list of all brownfield parties and brownfield agreement sites participating in the program, a map showing the location of sites, a brief description of the brownfield agreement for each site, including the location of the site, the agreement implementation status of each site and to the extent practicable, information on the redevelopment or reuse of each site. The report annually shall highlight those sites included in the program since the last annual report. If determined more practicable, the department may include the contents of this report in its annual report.

(2) Before January 1, 1999, the department shall conduct a survey of incentive programs in other states for cleanup of contaminated sites. Based on the survey, the department shall make recommendations regarding programs which it believes would be beneficial to encourage the cleanup of uncontrolled sites in this state. The department shall include the results of its survey and its recommendations in the report required under subsection (1) of this section.

SOURCES: Laws, 1998, ch. 528, § 14, eff from and after July 1, 1998.

ARTICLE 2.

MISSISSIPPI BROWNFIELDS VOLUNTARY CLEANUP AND REDEVELOPMENT INCENTIVES ACT.

SEC.
49-35-31. Short title.

49-35-33. Legislative findings; attractiveness of certain brownfields for redevelopment; provision of capital and labor for safe remediation of brownfields should be encouraged; reduction of public health and environmental hazards; survey and report of incentives for cleanup in other states.

§ 49-35-31. Short title.

This article shall be known and may be cited as the "Mississippi Brownfields Voluntary Cleanup and Redevelopment Incentives Act."

SOURCES: Laws, 2005, ch. 497, § 1, eff from and after Jan. 1, 2005.

Editor's Note — Laws of 2005, ch. 497, § 8 provides as follows:

"SECTION 8. Nothing in Laws of 2005, Chapter 497, shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before January 1, 2005 or are begun thereafter. The provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before January 1, 2005, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Income tax credit for remediation cost incurred at brownfield agreement site, see § 27-7-22.16.

§ 49-35-33. Legislative findings; attractiveness of certain brownfields for redevelopment; provision of capital and labor for safe remediation of brownfields should be encouraged; reduction of public health and environmental hazards; survey and report of incentives for cleanup in other states.

The Legislature finds:

(a) There are properties in Mississippi, often referred to as "brownfields," that were contaminated or were perceived to have been contaminated by past activities, but are attractive locations for redevelopment.

(b) The safe development or redevelopment of brownfields would benefit the citizens of Mississippi in many ways, including improving the tax base of local governments and creating job opportunities for citizens in the vicinity of brownfields.

(c) Owners and prospective developers and redevelopers of brownfields, local governments in which brownfields are located and federal and state government agencies should be encouraged to provide capital and labor to improve brownfields so that the property can be determined to be safe or made safe for appropriate future use.

(d) The reduction of public health and environmental hazards on existing brownfield sites is essential to creating a better quality of life for the citizens of this state.

(e) Section 49-35-27, Mississippi Code of 1972, requires the Department of Environmental Quality to conduct a survey of incentive programs in other states for cleanup of contaminated sites by January 1, 1999. The department has conducted its survey and filed its report showing incentives provided in other states.

SOURCES: Laws, 2005, ch. 497, § 2, eff from and after Jan. 1, 2005.

ARTICLE 3.

REMEDIATION OF PROPERTY ON NATIONAL PRIORITIES LIST.

SEC.

49-35-51. Definitions.
49-35-53. Immunity of certain persons seeking to remediate property on sites listed on the National Priorities List (NPL) of the United States Environmental Protection Agency.

§ 49-35-51. Definitions.

For purposes of this article, the following words and phrases shall have the meanings ascribed in this section, unless the context clearly indicates otherwise:

(a) "NPL property subject to restoration" means any property on a site that is (i) proposed by the United States Environmental Protection Agency for the National Priorities List (NPL) but not listed on the NPL; or (ii) listed on the NPL, except those NPL sites for which the United States Environmental Protection Agency has issued certificates of completion of the remediation set forth in the records of decision for those sites.

(b) "Bona fide prospective purchaser" means a person who acquires ownership of a facility located on NPL property subject to restoration and who establishes the criteria set forth in 42 USCS Section 9601(40).

(c) "Owner of NPL property subject to restoration" means a person who has purchased or otherwise is the owner of record, other than any person or entity who caused the contamination, of NPL property subject to restoration.

SOURCES: Laws, 2003, ch. 440, § 1, eff from and after passage (approved Mar. 18, 2003.)

§ 49-35-53. Immunity of certain persons seeking to remediate property on sites listed on the National Priorities List (NPL) of the United States Environmental Protection Agency.

(1) If a person who is a bona fide prospective purchaser or owner, other than any person or entity who caused the contamination, of NPL property subject to restoration complies with all requirements of the United States Environmental Protection Agency, or state or federal law, which may be imposed with regard to the property, then he shall not be liable to persons other than the United States or the state for contamination or remediation of the NPL property subject to restoration.

(2) The immunity provided under this section applies to the following persons to the same extent as to the bona fide prospective purchaser or owner, other than any person or entity who caused the contamination, of the NPL property subject to restoration:

(a) Any person under the direction or control of the bona fide prospective purchaser or owner, other than any person or entity who caused the contamination, of NPL property subject to restoration with regard to the remediation or redevelopment of the NPL property subject to restoration, except that such person shall not be immune from any liability which may result from remediating or cleaning the NPL property subject to restoration when he remediates or cleans the property improperly or insufficiently or without complying with any order, rule or regulation of the United States Environmental Protection Agency or Department of Environmental Quality or any state or federal law pertaining to the environment;

(b) Any future owner, other than any person or entity who caused the contamination, of the NPL property subject to restoration;

(c) Any person who develops, redevelops or lawfully occupies the NPL property subject to restoration;

(d) Any lender or fiduciary that provided financing for remediation or redevelopment of the NPL property subject to restoration; and

(e) Any successor or assign of a person to whom the immunity granted under this section applies.

(3) The immunity provided under this section shall be void if a person to whom it is granted fails to comply with any order, rule or regulation of the United States Environmental Protection Agency or the Department of Environmental Quality pertaining to the NPL property subject to restoration, or any state or federal law pertaining to the environment.

(4) This section shall not create a defense against the imposition of criminal, civil or administrative penalties for violations of law on the part of the person to whom the immunity is provided. Further, this section shall not affect the right of any person alleged to have suffered damages in connection with the NPL property subject to restoration to seek relief against a person other than those described in this section as protected by the immunity.

(5) The immunity granted under this section shall not relieve any person from liability for payment of all costs reasonably related to the remediation of the NPL property subject to restoration which are required by the United States Environmental Protection Agency and the Department of Environmental Quality.

SOURCES: Laws, 2003, ch. 440, § 2, eff from and after passage (approved Mar. 18, 2003.)

CHAPTER 37

Statewide Scientific Information Management

Sec.	
49-37-1.	Short title.
49-37-3.	Legislative findings and purpose.
49-37-5.	Definitions.
49-37-7.	Statewide Scientific Information Management System Coordinating Council; creation; membership; powers and duties.
49-37-9.	Repealed.
49-37-11.	Department of Environmental Quality to serve as coordinator for implementation.

§ 49-37-1. Short title.

This chapter shall be known and may be cited as the "Statewide Scientific Information Management Act of 1999."

SOURCES: Laws, 1999, ch. 527, § 1, eff from and after July 1, 1999.

§ 49-37-3. Legislative findings and purpose.

(1) The Legislature finds that:

(a) Numerous federal and state agencies collect and manage scientific information relating to the environment and natural resources of the state;

(b) Scientific information is a strategic asset in the management of our natural resources, exploration for oil and gas and economic development activities; and

(c) Lack of coordination in the collection and management of scientific information can lead to duplication of efforts and inefficient information management thus leading to increased and unnecessary costs.

(2) The purpose of this chapter is to establish a statewide coordinated effort to provide for the management of scientific information to ensure the effective and efficient collection, management, dissemination and analysis of scientific information available to the state and to provide that information in a user-friendly format to governmental agencies, academic institutions, other public and private organizations and the general public for economic development, natural resources and environmental management and other purposes.

SOURCES: Laws, 1999, ch. 527, § 2, eff from and after July 1, 1999.

§ 49-37-5. Definitions.

For purposes of this chapter, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

(a) "Scientific information" means information associated with the monitoring and management of the environment and natural resources of a specifically targeted geographic area that is collected, analyzed, managed, updated by and used among agencies, departments, associations and other organizations concerned with or responsible for the geographic area.

(b) "Scientific information management system" means a management system which would allow scientific information to be collected, processed, analyzed, managed, updated and subsequently accessed by users of that information.

SOURCES: Laws, 1999, ch. 527, § 3, eff from and after July 1, 1999.

§ 49-37-7. Statewide Scientific Information Management System Coordinating Council; creation; membership; powers and duties.

(1) There is created the Mississippi Statewide Scientific Information Management System Coordinating Council, hereinafter referred to as "coordinating council," for the purpose of developing a strategic plan for a statewide scientific information management system and serving as a coordinating entity for all aspects of scientific information management.

(2)(a) The council shall consist of the following voting members: the Executive Director of the Department of Environmental Quality; the Executive Director of the Department of Economic and Community Development; the Executive Director of the Department of Wildlife, Fisheries and Parks; the Executive Director of the Department of Marine Resources; the State Health Officer; the State Forester; the Executive Director of the Department of Transportation; the Chairman of the Mississippi Water Resources Advisory Council; the Vice-President for Research and Sponsored Programs at each university on the Mississippi Research Consortium; the Vice-President for Agriculture, Forestry and Veterinary Medicine at Mississippi State University; the State Director of Technology Transfer; the Center Director of the National Aeronautics and Space Administration, Stennis Space Center; the District Chief, Mississippi District, United States Geological Survey; the Executive Director of the Mississippi Automated Resource Information System; the Executive Director of the Department of Information Technology Services; the President of the Institute of Technology Development; and two (2) representatives of the private sector user community appointed by the Governor.

Members of the coordinating council not appointed by the Governor shall serve a term concurrent with their term of office in their respective position. Nonappointed members may designate an alternate to serve in their stead and the alternate shall have the authority to act for the designating member.

Members of the council appointed by the Governor shall serve four-year terms.

(b) In addition to the members of the coordinating council specified in paragraph (a) of this subsection, the coordinating council may invite, as participating members, representatives of any other state and federal organizations, or individuals possessing appropriate expertise or who have a viable interest in the development and implementation of the statewide scientific information management system.

(c) The Chairman of the Senate Environmental Protection, Conservation and Water Resources Committee and one (1) member of that committee appointed by the chairman may attend meetings of the coordinating council. The Speaker of the House of Representatives may designate the Chairman of the House Conservation and Water Resources Committee and one (1) member of that committee to attend any meeting of the coordinating council. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of the coordinating council. The legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the coordinating council. For attending meetings of the coordinating council, the legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the coordinating council will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the coordinating council without prior approval of the proper committee in their respective houses.

(d) Original appointments to the coordinating council shall be made no later than October 1, 1999. The Governor shall require adequate disclosure of potential conflicts of interest by appointed members of the coordinating council. Vacancies on the coordinating council shall be filled by appointment in the same manner as the original appointments.

(e) The coordinating council shall elect from its membership a chairperson to preside over meetings and vice-chairperson to preside in the absence of the chairperson or when the chairperson shall be excused. The coordinating council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(f) Members of the coordinating council shall serve without compensation, except as otherwise provided in paragraph c of this subsection. At the direction of the chairman of the coordinating council and contingent upon the availability of sufficient funds, each member may receive reimbursement for reasonable expenses, including travel expenses in accordance with rates established pursuant to Section 25-3-41, Mississippi Code of 1972, incurred in attending meetings of the coordinating council.

(3) The coordinating council shall convene before November 15, 1999.

(4) The coordinating council shall not employ any permanent staff, rent or occupy independent office space or otherwise establish a full-time office.

(5) In conducting its activities under this chapter, the coordinating council may elicit the support of and participation by any state or local governmental agency as may be necessary or appropriate. All state and local governmental agencies shall provide support or participation as requested.

(6) The coordinating council may exercise those duties and powers necessary to carry out the purposes of this chapter, including, but not limited to, the following functions:

(a) Conduct, or cause to be conducted any studies, analyses or evaluations related to the development and implementation of a scientific information management system;

(b) Apply and contract for and accept any grants, public or private funds, gifts or proceeds in furtherance of the activities of the coordinating council;

(c) Authorize the Executive Director of the Department of Environmental Quality to enter into all contracts or execute all instruments, on behalf of the coordinating council, and do all acts necessary, desirable or convenient to carry out any power expressly granted to the council in this chapter; and

(d) Expend or distribute any funds or assets in its custody or under its control appropriate in carrying out the purposes of this chapter.

SOURCES: Laws, 1999, ch. 527, § 4, eff from and after July 1, 1999.

§ 49-37-9. Repealed.

Repealed by its own terms effective July 1, 2002.

Laws, 1999, ch. 527, § 5; Laws, 2000, ch. 411, § 1; Laws, 2001, ch. 589, § 1, eff from and after passage (approved Apr. 12, 2001.)

Editor's Note — Former § 49-37-9 required that the Mississippi Scientific Information Management System Coordinating Council, if funded, develop and prepare a strategic plan for the development and implementation of a statewide scientific information management system.

§ 49-37-11. Department of Environmental Quality to serve as coordinator for implementation.

The Department of Environmental Quality shall serve as the coordinator for implementation of this chapter. The Department of Environmental Quality shall provide any technical and other support services and personnel as the Mississippi Scientific Information Management System Coordinating Council may require in the performance of its functions. The Department of Environmental Quality shall administer any funds made available to the coordinating council for its use and shall at the request and on behalf of the coordinating council, contract for services using any funds available to the coordinating council.

SOURCES: Laws, 1999, ch. 527, § 6, eff from and after July 1, 1999.

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